

Timeline Of Key Roles, Obligations And Actions Under The CMR

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Apology

**Please excuse the plain appearance of these slides.
Given the bright conditions in this hall, readability
has been given priority over visual design.**

Thank you!

About The Speaker



Otmar J. Tuma

- Studied politics and journalism at Alma Mater Rudolphina University in Vienna
- More than 50 years in international road transport
- Quondam Court-Sworn and Certified Expert concerning Marine, Carriers' and Forwarders' Liability Insurance and Transport Law
- International speaker; seminars and webinars
- Publications in international transport law and practice-oriented logistics journals

Take-away: The purpose is credibility, not a full curriculum vitae.

The Carrier's Role

- **Much more than moving goods: following instructions**, providing **services**, **safeguarding** the cargo and **protecting** his own interests.
- **Beyond the transport itself**: a range of matters to address before taking over the goods—and, in some cases, after delivery.
- **Tasks typically follow a broadly chronological sequence.**

Timeline: The Contracting Phase — I

No.	Role / Obligation / Action	Related CMR Articles	More details in another session, presented by
1	Receiving the transport order: checking whether the CMR applies	Art. 1, 2	Prof. Dr. Daniel Dąbrowski
2	Negotiating contractual terms: checking the admissibility of clauses	Art. 41	Prof. Dr. Tobias Eckardt
3	Accepting the transport order: by confirmation or conduct, including performance		
4	Arranging insurance of the goods, if instructed by the sender	Art. 6(2)(e)	
5	Engaging and instructing other carriers, if intended and not prohibited: subcontractors / successive carriers	Art. 3, 34	Otmar J. Tuma

Timeline: Taking Over The Goods — II

No.	Role / Obligation / Action	Related CMR Articles	More details in another session, presented by
6	Making out the consignment note : not a prerequisite for a valid contract	Art. 4, 5	Prof. Dr. Tobias Eckardt
7	Entering the required particulars in the consignment note , according to the parties' respective responsibilities	Art. 6, 7	Prof. Dr. Tobias Eckardt
8	Taking over and checking the goods : number of packages, marks and numbers; apparent condition of goods and packaging; entering specific reservations, with grounds, where necessary	Art. 8(1)–(2), 9	Prof. Dr. Tobias Eckardt
9	Checking gross weight, quantity or contents of packages, if requested by the sender; entering the results in the consignment note	Art. 8(3)	Prof. Dr. Tobias Eckardt
10	Receiving and safeguarding documents for customs and other formalities	Art. 6(2)(g), 11	Prof. Dr. Tobias Eckardt

Timeline: Transporting The Goods — III

No.	Role / Obligation / Action	Related CMR Articles	More details in another session, presented by
11	Loading , if required by applicable law or contract	Art. 17(4)(c), 18(2)*	Otmar J. Tuma
12	Stowing and securing the load, as required under the contract and applicable private law	Art. 17, 18*	Otmar J. Tuma
13	Carrying the goods as agreed and within the applicable delivery period	Art. 17(1), 19	
14	Safeguarding the goods : exercising due care and following instructions, e.g. using guarded parking facilities	Art. 17, 29	Otmar J. Tuma
15	Carrying out customs clearance , if agreed with the client	Art. 6(1)(j), 11	
16	Following instructions from the person entitled to dispose of the goods, subject to the CMR requirements	Art. 12	Prof. Dr. Tobias Eckardt
17	Notifying and requesting instructions from the person entitled to dispose of the goods in the event of carriage impediments	Art. 14	Prof. Dr. Frank Smeele

* Liability provisions; no express allocation of these duties. Public-law requirements, including road traffic rules, are outside this overview.

Timeline: Delivering The Goods — IV

No.	Role / Obligation / Action	Related CMR Articles	More details in another session, presented by
18	Requesting the sender's instructions if delivery is prevented	Art. 15	Prof. Dr. Frank Smeele
19	Unloading and arranging appropriate storage in the event of impediments : in own custody or with a third party selected with reasonable care	Art. 16(2)	Prof. Dr. Frank Smeele
20	Delivering the goods and the second copy of the consignment note to the consignee against a receipt	Art. 13(1)	Prof. Dr. Tobias Eckardt
21	Unloading , if required by applicable law or contract	Art. 17(4)(c), 18(2)*	
22	Checking the goods jointly with the consignee — recommended; facilitating necessary checks and receiving any reservations	Art. 30	Prof. Dr. Tobias Eckardt
23	Responding to loss or damage : mitigating loss, preserving evidence and notifying relevant parties, including the insurer; preserving and pursuing recovery claims against other carriers	Art. 30, 32; 37–39 where applicable	Prof. Dr. Johan Schelin

Timeline: When Things Go Wrong — V

No.	Role / Obligation / Action	Related CMR Articles	More details in another session, presented by
24(a)	Assessing liability	Art. 17, 18	Prof. Dr. Cécile Legros
24(b)	Where justified, rejecting claims : notifying the claimant in writing and returning the documents attached	Art. 32(2)	Prof. Dr. Johan Schelin
24(c)	Calculating and paying compensation , where due	Art. 23–27; 21 for COD; 28 for extra-contractual claims	Dr. Marta K. Kołacz
24(d)	Assessing loss of entitlement to liability exclusions and limits	Art. 29	Prof. Dr. Federico Franchina

Timeline: Going To Court — VI

No.	Role / Obligation / Action	Related CMR Articles	More details in another session, presented by
25(a)	Being served with a statement of claim and defending the action	Art. 31, 32, (36)	Prof. Dr. Achim Puetz
25(b)	Bringing an action for a declaration of limited liability or non-liability	Art. 31	Prof. Dr. Achim Puetz
25(c)	Enforcement of judgments	Art. 31	Prof. Dr. Achim Puetz
25(d)	Arbitration	Art. 33	Prof. Dr. Achim Puetz
25(e)	Taking recovery action in court against subcontractors	Art. 31, 32	Prof. Dr. Achim Puetz
25(f)	Taking recovery action in court against successive carriers	Art. 37–40	Prof. Dr. Achim Puetz

Two Legal Routes — One Selection Risk

If the engagement is intended and not prohibited

ART. 3 CMR

Sub-carriers

- **The contracting carrier**—or a forwarder concluding a contract of carriage—is **liable for** acts and omissions of **persons whose services he uses**, when they act within the scope of their functions.
- Mainstream case law: **attribution** may extend through the **entire subcontracting chain**.
- **Recourse** normally **follows the contractual chain**.

ART. 34 – 40 CMR

Successive carriers

- **One contract** of carriage.
- **Each carrier becomes a party by accepting the goods and the consignment note (Art. 34 CMR)**.
- **Proceedings** may be brought **against** the **first carrier**, the **last carrier**, or the **carrier performing the stage where the event occurred (Art. 36 CMR)**.
- In practice: the exception, not the rule.

SELECTION

Art. 3 attribution makes careful selection and verification - with due diligence - essential, especially where fake-carrier fraud is a risk.

Pass Contractual Requirements On 1:1

Incomplete instructions can split liability and recovery

Pass every relevant condition of the contract of carriage to the sub-carrier—completely and without dilution.

EXAMPLES

- Guarded parking only
- No parking within 100 km of the English Channel
- Two-driver crew
- Specifically named parking areas
- Box trailers only
- Use two antitheft devices!

ILLUSTRATIVE PARKING CASE

Parking A required

Instruction not passed on

Parking at B

Theft

The outcome depends on the facts and on the applicable Art. 29 threshold.

POSSIBLE LIABILITY GAP

The contracting carrier may face unlimited liability under Art. 29 CMR, while recourse against the sub-carrier may remain limited under Art. 23(3).

This is possible where the contracting carrier's own failure meets Art. 29, but the sub-carrier's conduct does not.

What Does “Loading” Comprise?

The term extends beyond lifting the goods onto the vehicle

STATUTORY TEXT

Three formulations

CMR, Art. 17(4)(c) — exemption from liability
“handling, loading, stowage or unloading”

§ 412(1) German Commercial Code
“load, stow and secure ... so as to provide for safe carriage”

France: General Standard Contract, Art. 7.1
“loading, blocking and securing, including strapping”

CASE LAW · COMMENTARY

Operational meaning

Settled Austrian case law since 1983
Transport-safe loading and securing against ordinary forces of carriage: sudden braking, centrifugal force in bends, evasive manoeuvres and vibration caused by poor roads.

Thume/Hartenstein, CMR Commentary, 4th ed.
Placing the goods on the loading platform; stacking, stowing, lashing, wedging and fastening.

WORKING DEFINITION

Loading is an operation—not a single physical act.

It may encompass handling, positioning, stowage, blocking, lashing and other measures required for transport-safe carriage.

Who Must Load?

The CMR identifies a loading risk—but does not allocate the loading duty

ATTENTION

Art. 17(4)(c) CMR

“Subject to Article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one or more of the following circumstances:

(c) handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf of the sender or the consignee.”

APPLICABLE LAW

Rome I Regulation

(EC) No. 593/2008 on the law applicable to contractual obligations

The answer must therefore be found in the applicable national law.

- Choice of law: Art. 3 Rome I
- No choice: Art. 5(1) Rome I—normally the carrier’s habitual residence, if a specified territorial link exists; otherwise the agreed place of delivery.
- Escape clause: Art. 5(3)—a manifestly closer connection prevails.

NATIONAL LAW MAY

Allocate the duty to the sender or the carrier.

The relevant rule may be mandatory, dispositive—or national law may contain no specific allocation at all.

From The CMR To The Loading Duty

A compact conflict-of-laws decision path

STARTING POINT

CMR: no allocation

CMR does not determine who must load.



Chosen law → Art. 3 Rome I

No choice → Art. 5(1)/(3) Rome I

NATIONAL LAW

Applicable rule

MANDATORY RULE

→ applies

DISPOSITIVE RULE

→ subject to contractual agreement

NO SPECIFIC RULE

→ interpretation / usages / principles / case law

DECISION PATH

CMR → Rome I → applicable national law

Only the final step identifies whether the duty falls on the sender or the carrier—and whether the parties may alter that allocation.

Examples: Allocation Of The Loading Duty

National solutions differ—and may be dispositive or judge-made

STATUTORY RULES

Bulgaria · Germany

BULGARIA — Road Transport Act, Art. 57

“Loading and unloading shall be performed by the sender, consignee or freight forwarder, unless otherwise agreed.”

→ Dispositive; the parties may agree otherwise.

GERMANY — Commercial Code (HGB), § 412(1)

“Unless circumstances or usages indicate otherwise, the sender is to put on board, stow and secure (load) the goods so as to provide for their safe transport and is to unload them.”

→ Dispositive; contractual reallocation is permitted.

DEFAULT · CASE LAW

France · Austria

FRANCE — French Transport Code, Annex II to Art. D.3222-1, General Standard Contract, Art. 7.1 (< 3 t)

“The carrier shall, under its responsibility, perform the loading, blocking, securing and unloading operations.”

→ Default rule absent a contrary written agreement.

AUSTRIA — no specific statutory allocation

OGH 7 Ob 165/08b: the transport order may impose checking and transport-safe securing duties on the carrier.

→ Contract and case law determine the allocation.

COMPARATIVE RESULT

Bulgaria and Germany: sender-based dispositive rules. France (< 3 t): carrier-based default rule.

Austria: no specific statutory allocation—contractual wording and judicial interpretation are decisive.

Contractual Allocation May Be Granular

Where national law permits contractual arrangements, duties need not remain bundled

DIVIDE THE TASKS

Separate responsibilities

The parties may allocate individual operations separately:

- loading and placing on the vehicle
- stacking and stowing
- blocking or wedging
- lashing, strapping and fastening

The customer may also specify which loading or securing equipment the carrier must bring.

CONTROL DUTY

Checking the sender's work

A contract may require the carrier to check loading performed by the sender for transport safety—not merely the vehicle's operational or road safety.

Define precisely:

- apparent defects or a deeper examination?
- access and information required?
- duty to warn, request correction or refuse carriage?
- consequences of a missed defect?

PRIMARY-SOURCE SUPPORT

Austria confirms contractual assumption; France provides a useful control model.

OGH 7 Ob 165/08b: the transport order imposed checking and securing duties. French law/case law limits the ordinary check to recognisable defects.

Actual Loading: Five Recurring Scenarios

Courts distinguish who had the duty, who acted and who controlled the operation

DUTY + PERFORMANCE

The obligated party loads

- 1 Actual loading by the sender, where the sender bears the loading duty.
- 2 Actual loading by the carrier, where the carrier bears the loading duty.

PERFORMANCE ≠ DUTY

The other party intervenes

- 3 Loading by the non-obligated party—without supervision by the obligated party.
- 4 Loading under the obligated party's supervision or instructions: that party remains the “master of the loading operation”.
- 5 Unilateral, unauthorised loading by the non-obligated party.

WHY THE FACTS MATTER

Physical performance alone does not necessarily transfer the legal duty.

Control, instructions, consent and unauthorised intervention may change attribution—and the Art. 17(4)(c) analysis.

Art. 17(4)(c) As A Ground For Exemption From Liability

Loading and liability

Details: Prof. Dr. Cécile Legros
“Carrier’s Liability”

Thank You!

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