The Contract for the International Carriage of Goods by Road (CMR)

THE CMR CONVENTION IN OUTLINE

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Application of the Convention

The CMR is officially entitled the Convention on the Contract for the International Carriage of Goods by Road and was devised by the United Nations Economic Commission for Europe (ECE) and agreed on 19 May 1956. It became operative on 2 July 1961 and effective as regards the UK on 19 October 1967 under the Carriage of Goods by Road Act 1965. The Act contains the full text of the Convention and is an essential source for any exporter or forwarder who is involved with the international movement of goods by road. It can be obtained from Her Majesty's Stationery Office. Below is set out a table of the states which are currently party to the Convention:

Austria	Belorus	Belgium
Bosnia-Herzegovina	Bulgaria	Croatia
Czech Republic	Denmark	Estonia
Finland	France	Germany
Greece	Hungary	Ireland
Italy	Latvia	Lithuania
Moldova	Netherlands	Norway
Poland	Portugal	Romania
Russian Federation	Slovakia	Slovenia
Spain	Sweden	Switzerland
Tunisia	United Kingdom	Former Yugoslavia

The Convention applies to every contract for the carriage of goods by road in vehicles for reward when the place of taking over the goods and the place designated for delivery are situated in two different countries of which at least one is a contracting party. This means that any international road journey for hire or reward (own account is not subject to the Convention) which either starts or finishes in the UK will be subject to the CMR unless one of the limited exemptions apply. These are:

1. Postal despatch.
2. Funeral consignments.
3. "Furniture" removals (generally accepted to mean household removals)
4. Movement of own goods.
5. Movements between the UK and the Republic of Ireland and vice versa. It should be noted that the Channel Islands are not separate countries for CMR purposes and the CMR does not apply to UK-Channel Islands traffic.

Application to other modes

If the vehicle containing the goods is transported over part of the route by rail, sea or inland waterway (or technically by air as well) and the goods are not unloaded from the road vehicle, the CMR will continue to apply to the entire transit. However, if the goods are lost, damaged, or delayed while the vehicle is being carried by the other mode of transport by an event which could only occur through use of that other mode, the liability of the road carrier will be determined by any national or international mandatory law applicable to that other mode. If there is no such mandatory law, the terms of the CMR will continue to apply. Any journey from the UK by road at present necessarily involves a sea or rail journey.

The CMR continues to apply nonetheless. It is, however, arguable that there is no mandatory law applicable to car ferry operators (because there is no bill of lading issued under Hague-Visby Rules) and that the road carrier's liability would, therefore, be determined according to the CMR and not maritime law. However, this has still not been in the courts and it is often the practice to allow road carriers to rely on Hague-Visby Rules provisions in relation to losses occurring at sea.

Application to containers

The CMR applies to carriage by road in "vehicles". "Vehicles" include motor vehicles, articulated vehicles, trailers and semi-trailers but not containers. An ISO container constitutes "goods" and not a vehicle, and the CMR will not always apply to the movement of containers between the UK and the Continent. If the container remains "on wheels" throughout the transit, the CMR will apply, but if it is lifted off at a port or rail terminal and carried separately by rail or sea this will break the connection with the CMR. It should be noted, however, that even where the CMR does not apply by law, the parties can agree to apply its terms by contract and this is done by some operators.

Documentary requirements: the CMR consignment note

The CMR states that the contract must be confirmed by the making out of a consignment note. However, the absence or loss of such a note will not prevent the Convention provisions from being applied. Certain information must be shown in the note.

There is no specific format for the note, but it is usual to use an aligned note on sale from various sources. The CMR does not state clearly who must make out the note and in practice it is often made out by the road carrier. However, most of the information relates to the exporter, who is made responsible for the accuracy of that information, and there is much to be said for the exporter making out the note. This also prevents the common but extremely undesirable practice of the note being made out well after the goods have started on their journey and sometimes by someone who is not the CMR first carrier. Where the carrier does enter the information, he does so as agent for the sender, who will be liable for any inaccuracies in the information shown.

Number of copies

The CMR states that the note must be made out in three original copies. The first is for the exporter, the second accompanies the goods and the third is retained by the carrier. The CMR note is not a document of title but it has great value as evidence and copies of the note should ideally be retained for at least one year.

Reservation by the carrier

When the carrier takes over the goods he should check:

- The accuracy of the statements in the CMR consignment note as to the number of packages in the consignment and their marks and numbers; and

- The apparent condition of the goods and their packaging.

Where he has no reasonable means to check, he must protect himself by noting reservations on the consignment note. He should also note anything which is apparently suspect about the goods. If the carrier fails to make such reservations, it will be presumed, unless the contrary is actually proved, that the number of packages was accurately stated and that the goods appeared to be in good condition.

Responsibilities of the exporter/importer
The exporter will be responsible for:

- ∞ Accuracy of the particulars in the consignment note. The exporter is legally liable to indemnify the carrier if the particulars shown are inaccurate. He should, therefore, always either make out or supervise the making out of the note.

- ∞ Defective packaging of the goods. The exporter is legally liable for all consequences of defective packing unless the defect was apparent or known to the carrier when he took over the goods and he failed to make reservations.

- ∞ Making available any documents required for Customs.

- ∞ Making claims within set time-limits. In the case of apparent damage, notice must be given (preferably by the importer); where damage is non-apparent notice must be given, in writing, within seven days of delivery, not counting Sundays and public holidays. If notice is not given in time, the onus of proving that the carrier damaged the goods will shift to the exporter/importer. In the case of delay, notice must be given within 21 days. There is an absolute time bar on all claims not brought to court within one year (three years if wilful misconduct is alleged).

Dangerous Goods
The exporter must inform the carrier of the exact nature of the danger and precautions to be taken in carrying the goods, and this information should normally be shown in the CMR note. The note must also show the generally recognised description of the goods. If the exporter fails to notify the carrier so that he is unaware of the dangerous nature of the goods he may unload, destroy or render the goods harmless without liability, and the exporter becomes responsible for all loss, damage or expense arising from carriage of the goods.

Liabilities of the road carrier under the CMR
The carrier is liable for loss, damage or delay to the goods between the time when he takes charge of them and the time they are delivered. He is also generally liable for the acts of his servants, agents and subcontractors. There are, however, a number of excepted perils which, if proven, provide the carrier with a defence to a claim:

1. Wrongful act or neglect of the claimant.
2. Instructions of the claimant given otherwise than as the result of the carrier's own wrongful act or neglect.
3. Inherent vice of the goods.
4. Circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

A collision entirely without fault on the part of the carrier might come within the exception, but adverse weather conditions or theft would be unlikely to do so as these perils can be guarded against even if the cost of doing so is high. The defectiveness of a vehicle would never come within the exception.

There are some further defences which apply only in special circumstances. If the carrier establishes that the loss or damage could have been caused by one of the circumstances set out below, it will be presumed that it was so caused unless the exporter or importer proves otherwise:

1. Use of open un-sheeted vehicles if their use has been expressly agreed and mentioned in the consignment note.
2. Lack of, or defective condition of, packing.
3. Handling, loading, stowage, or unloading of the goods by the exporter, the importer or their agents.
4. The nature of certain goods which particularly exposes them to loss or damage through breakage, rust, desiccation, leakage, normal wastage or the action of moths or vermin (this defence cannot, however, be invoked where vehicles are specially fitted for temperature-controlled operations).
5. Insufficiency or inadequacy of marks or numbers on the packages.
6. The carriage of livestock (provided the carrier shows he took all normal precautions and followed any special instructions given to him).

The carrier will be liable for delay when:

1. The goods are not delivered within an agreed time-limit; or
2. If there is no agreed time-limit, when the time taken exceeds the time it would be reasonable to allow (in the case of Groupage, time will be allowed for the making up of a full load).

Compensation payable under the CMR
Compensation is calculated in relation to the value of the goods at the time and place at which they were accepted for carriage and the value is based either on the commodity or market price or, where there is no such price, the normal value of similar goods. Most Western European states have ratified a protocol to the CMR which introduces compensation limits based on 8.33 Special Drawing Rights per kilo of gross weight of the goods lost or damaged. The value of the SDR against sterling and other major currencies is set out each day in the Financial Times. The value of 8.33 SDRs is currently (as of February 2009) around £7.80.

In addition to compensation for loss or damage, the carriage charges, customs duties and other charges incurred in respect of the transit are refundable in full, in the case of total loss or pro rata in the case of partial loss.

Where the exporter or importer proves that he has suffered loss through delay, an amount not exceeding the carriage charges may be recovered.

Higher compensation is possible under the Convention if the exporter makes a declaration of value, but the carrier is entitled to require a higher freight rate. The declaration must be shown in the consignment note. It is also possible to declare a special interest in delivery (to cover consequential losses where goods are not available at destination as agreed), but again the carrier is entitled to require a higher rate.

If the goods are not delivered within 30 days of an agreed time-limit, or in any other case within 60 days, a claimant can treat the goods as lost and claim compensation.

Although the limits set out above apply both to claims made in contract or in tort, the carrier will lose the benefit of the CMR defences and limits of liability if the loss is caused by wilful misconduct. There is a case where an accident caused by a driver who had grossly exceeded EU drivers' hours rules' limits was held to be attributable to wilful misconduct.

Aspects of the CMR of particular concern to freight forwarders

A freight forwarder who agrees to move a consignment to the Continent by road as a principal (even if he does not intend to carry it himself) is almost certain to be found to be the first carrier under the CMR, and, therefore, may be sued with full CMR liabilities. It is not clear whether the CMR confers a lien, and if it does it is only a very limited one. It is, therefore, advisable to trade under general conditions which confer a general lien as is the case, for example, under the 2000 BIFA Conditions.

If cash on delivery work is accepted under the CMR, the carrier is absolutely liable if money is not paid over. It is extremely ill-advised for a forwarder who does not control the entire operation to accept such obligations.

If a written claim is submitted to a carrier, it suspends the running of time until it is formally rejected in writing. Forwarders should note that it does not, therefore, always pay to "sit" on claims. The forwarder will be the first carrier under the CMR. A successive carrier may well be responsible for loss or damage which occurs, but he becomes liable only if he has accepted the goods and the CMR consignment note. If there is no CMR note it would appear that no rights can be enforced against successive carriers. In these circumstances the forwarder, as first carrier, could bear the entire loss even though he was not responsible for its occurrence. It is, therefore, of vital importance to ensure that a CMR note is made out and that the name or stamp of all successive carriers appears in the note in the box provided. It is also extremely important that any obligations which the forwarder has accepted, such as an increase in the limit of liability, should be recorded in the CMR note as they will otherwise not bind any successive carrier although they might be enforceable against the forwarder.

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