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1. The scope of the CMR-Convention (art. 1&2)

1.1 Is the CMR applicable to carriage of goods by road if no consignment note is issued? (art. 1&2)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	Please elaborate your findings and conclusions here, using a max. of 1200 characters	P*lease note from the beginning, that under Belgian national law, the CMR convention fully applies, not only for international transport, but also to domestic road transport. See art. 51 §1 of the law of 15 july 2013 concerning the transport of goods by road.* T*he same law also states that normally a CMR consignment note should be issued for each road transport of goods. See art. 29§1 of the law of 15 july 2013 concerning the transport of goods by road.*	The C*MR consigment note* is a mere document of evidence, the absence or irregularity of which does not affect the validity of the contract of carriage. *Brussels, 16 november 1977, E.T.L., 1980,319*	U*nder Belgian Law, the situation is a bit shizophrenic.* C*ontractually, between the involved parties, the absence or irregularity of the CMR conignment note does not affect the applicability of the CMR-convention.* *However, it should be noted that Belgian national law also stipulates the obligation to make a consignment note, the absence of which is a crime punishable under the law of 15 july 2013 concerning the transport of goods by road.* *So, even when the absence of a CMR-consigment note is in fact a crime, contractually the parties are still bound by a contract of transport of goods*

				by road, which is governed by the CMR-convention.

1.2 Can the CMR be made applicable contractually? (art. 1&2)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	Please elaborate your findings and conclusions here, using a max. of 1200 characters	A*s noted before (see 1.1.), the CMR-venvention is integrated fully in Belgian national law and applies fully also for domestic transport.*	Article 1 CMR lists the conditions that must be met for the treaty provisions to apply by law and to the legal relationships resulting from the contract of carriage. The Convention is of mandatory law in accordance with article 41 paragraph 1 CMR, but not of public policy. It follows that there is nothing to prevent the parties to whom the Convention does not normally apply from d*eclaring CMR to be conventionally applicable* *Commercial Court Antwerp, 12/09/1972, E.T.L., 1973, VIII, P. 640*	*Since the CMR-convention also fully applies to domestic transport under Belgian Law, the number of cases where CMR was applied conventionally, are rather limited. Only in cases of combined transport, the conventional application of CMR is still seen.*

1.3 Is there anything practitioners should know about the exceptions of art. 1 sub 4?

Yes/No	Convention	National law	Landmark cases	Clarification

YES	Please elaborate your findings and conclusions here, using a max. of 1200 characters	A*rt. 3 of the law of 15 july 2013 concerning the transport of goods by road excludes the same exceptions as the CMR-convention, but also exludes, in domestic transport, transport outside the public roads, the transport of bagage with vehicles designed for transport of persons, the transport of malfunctioned or damaged vehicles, the vehilces used putting salt on the roads in winter and the domestic transport of medication or medicles applianances in case of disasters..*	According to Article 1.4 of the CMR, the CMR Convention is not legally applicable to *the contract of* removals. A *contract of removal* occurs only when all the characteristics of such an agreement are available, namely the dismantling of the goods to be relocated, as well as the packing and unpacking thereof, both during collection and delivery. When a transport operator receives a contract for the mere "transport" of household goods stored in a container, this does not constitute a relocation, but rather a transport contract, and the CMR Convention is applicable in the case of international road transport. *Commercial Court Antwerp, 1 april 1980, E.T.L., 1980,461*	*Most of the jurisprudence concerning the exceptions, concerns the contract of removal, where Belgian jurisprudence seems to prefer a factual analysis of the work done by the removal firm to see if transport concerns the main agreement between the parties or rather the other work involved, like loading and unloading the vehicle, storing the goods, packing of the goods etc …*

1.4 To what extent is the CMR applicable to the following special types of transport? (art. 1&2)

Please indicate if (partly) applicable	**Service**	**National law**	**Landmark cases CMR**	**clarification**

☒	**Freight forwarding agreement**	A*rt. 51§5 of the law of 15 july 2013 concerning the transport of goods by road states that under Belgian Law the freight forwarder should be considered a carrier.*		B*elgian Law, notably the art. 51§5 of the law of 15 july 2013, simply confirmed an already existing jurisprudence that equals the fraighjt forwarder with the a carrier.*
☒	**Physical distribution**		For the application of the C.M.R. Convention, art. 1 (1) of that treaty, inter alia, the existence of an agreement whose object is the carriage of goods by road. That condition is not satisfied if the contract does not specify the mode of transport and the circumstances of the case do not indicate that the parties envisaged road transport. *Cass. (3e k.) AR C.03.0510.N, 8 november 2004 (TNT/ Mitsui, Sony Europe, Sony Deutschland, Media Markt*	B*elgian Jurisprudence emphasizes the need of a factual analysis of the will of the parties and the executed work.*
☒	**Charters**	Art. 5.*4°* of the law of 15 july 2013 concerning the transport of goods by road states the under Belgian Law c*hartering of a vehicle with a driver is equalled with the activity of a carrier, which althus also falls under the scope of the CMR-convention*.		

☒	**Towage**		When the carrier receives an order to pick up and transport a loaded trailer, this trailer is a transported good. If damage is caused to this trailer during transport, it is therefore damage to a transported goods to which the rules of the CMR Convention apply. *Commercial Court Antwerp, 1/2/1996, E.T.L., 1996, p. 579*	
☒	**Roll on/roll off**	T*he CMR Convention - including article 2 CMR Convention - is fully applicable to agreements of both national and international transport of goods by road.*	W*hen the goods are transported with the trailer according to the roll-on roll-off system for part of the journey, such international transport is entirely subject to the provisions of the CMR Convention.* *Commercial Court Gent, 21/12/1978,*	B*elgian law does not derogate from the provisions of the CMR Convention regarding RoRo-transport. therefore, goods ransported via RoRo-transport for part of the journey are subject to the CMR provisions, even for the stage which is performed via another mode of transport.* *However, if the damage or loss occurs during the carriage of the goods by another means of transport and that damage or loss was not caused by an act or omission of the road carrier, but by some event which only could have occured in the course of and by reason of the carriage by that other means of transport, the liability of the road carrier will be determined by the liability rules which govern the carriage of goods by that other mean of transport if a contract for the*

				carriage of goods alone had been made by the other means of transport.
☐	**Multimodal transport**	*There is no Belgian legislation which makes the provisions of the CMR Convention applicable to multimodal transport agreements.*	*The CMR Convention does not apply to multimodal transport as such, so that, the provisions of the CMR Convention only apply to that part of the multimodal transport that was carried out by road and separatly meets the conditions of article 1, paragraph 1 CMR* *Appeal Court Antwerp (4e. Ch.) 13 september 2010*	*In case of multimodal transport, which exists of different stages that are executed via a different transport mode, each transport mode is governed by the specefic regulation regarding that transport mode.*
☒	**Substitute carriage**[1]	*There is no specific Belgian legislation on the applicability of the CMR Convention to substitute carriage, nor is there any specific legislation regarding substitute carriers in the field of ransport of goods by road.* *Article 51, §1 of the law of 15 July 2013 stipulates that the provisions of the CMR Convention (inclusing article 3 of that convention) are applicable to agreements for national transport.*	*The substitute carrier, who recieves is order to transport from the contractual main carrier, wrongly argues that he was only contracted as a national carrier for a strictly German domestic transport and as a freight forwarder for the remaining part of the transport up to Belgium, and this only on the grounds that he himself actually only carried out transport on German territory and appointed a subcontractor for the Aachen (GER) - Schellebelle (BE) section.* *If he accepted an international transport order without any*	*Under Belgian law there is no specific regulation regarding substitute carriage. For both national and international transport of goods by road, the principal carrier and the substitute carrier are regarded as being equally liable for the correct execution of the transport agreement.*

[1] partly art. 3

			specification from the main contracting carrier and, moreover, issued a consignment note for the entire transport route form Offenburg to Schellebelle , he has accepted an international transport order and is therefore a CMR carrier. *Commercial Court Gent 27 September 1977 (not published)*	
☒	**Successive carriage**[2]	*According to Belgian national law (article 51, §1 law of 15 July 2013) the CMR provisions are applicable to agreements for national transport.* *The CMR Convention is entirely applicable to agreements for international transport.*	Successive carriers within the meaning of Article 34 of the CMR are those who have successively accepted the transport over the entire route. It is irrelevant in this respect to determine whether such carriers have also all delivered effective transport services. *Koophandel Antwerpen 28.01.1985 E.T.L. 1985, 117*	*Under Belgian law, there is no derogation from the provisions in the CMR Convention regarding successive carriers.*
☒	**'Paper carriers'** [3]	*Article 51, §5 of the law of 15 July 2013 concerning the transport of goods by road stipulates that for the purposes of the provisions of the CMR Convention, the transport commissioner is assimilated ta o*	*A person who does not carry out the transport himself, but has it carried out by a third party, cannot be regarded as a freight forwarder, but has to be regarded as a carrier if (i) he received the order from the client - without any reservation or remark -*	*In Belgium the differntiation has to be made regarding the freight forwarder (commissionair-expediteur) who has the carriage exectued by a third party and makes this intention known to the sender and the freight forwarder (who is a paper carrier, known in Belgium as*

[2] please be reminded that this question only asks to what extent the CMR is applicable to successive carriage. The specifics of art 34/35 should be addressed under question 16

[3] parties who have contracted as carrier, but do not perform any part of the transport, similar to NVOCC's in maritime transport

		carrier in terms of his contractual obligations and responsibilities. *A transport commissioner is defined as any natural or legl person who undertakes, for remuneration, to carry out a transport of goods and who has this transport carried out in his own name by third parties.* *According to the law of 26 June 1967 on the status of intermediaries in the field of transport, each transport commissioner and the executing Royal Decree op 18 July 1975 each transport commissioner has to be in the possession of a transport permit.*	*regarding the execution of the transport by road without any specification regarding a mandate to conclude a contract of carriage on behalf of the sender and (ii) never informed the sender of the fact that he would not perform the carriage himself.* *Court of Appeal Brussels 25 May 1972, J.P.A. 1972, 446.*	*the 'commissionair-vervoerder') who does not make his intention known to the carrier that he will not himsefl execute the carriage. The commissionair-vervoerder is under Belgian law regarded as carrier and not as freight forwarder.*

1.5 Is there anything else to share concerning art. 1 and 2 CMR?

Please elaborate your findings and conclusions here, using a max. of 1200 characters

2. The CMR consignment note (art. 4 - 9 & 13)

2.1. Is the consignment note mandatory?

2.2. Nice to know: Does absent or false information on the consignment note give grounds for a claim?

2.3. Is the carrier liable for acceptance and delivery of the goods? (art. 8, 9 & 13)

2.4. To what extent is the carrier bound to his remarks (or absence thereof) on the consignment note? (For instance: Can a carrier be bound by an express agreement on the consignment note as to the quality and quantity of the goods?)

Number of question	Yes/No	Convention	National law (civil law as well as public law)	Landmark cases	Clarification
2.1	YES	A*rticle 4 of the CMR Convention does equire the issue of a consignment note. The form and requirements are specified in articles 5 and 6 of the CMR Convention.*	A*ccording to article 29 of the law of 15 July 2013 a consignment note has to be issued according to article 5 and 6 of the CMR Convention.* *Further specifications regarding the consignment note in Belgium are determined in the Ministerial Decree of 23 May 2014 which executes the Royal Decree of 22 May 2014 concerning the transport of goods by road.* *Every driver of a vehicle or tow which is used for the transport of goods by road performed for remuneration must be able to present the consignment note if he is subjet to an inspection by the competent authorities.* *Criminal or administrative fines may be imposed of no valid consignment note can be presented during such inspection.*	If the consignee makes a reservation on the CMR consignment note issued by the carrier for the national transport and if he accepts the goods under cover of that consignment note, the CMR Convention applies as expressly stated in the CMR consignment note. It is argued in vain that the issue of a CMR consignment note is mandatory under Belgian law so that the issue of a CMR consignment note would not lead to the conventional application of the CMR Convention for national transport. Commercial Court Antwerp 27 March 1992 (not published)	T*he CMR consignment note is mandatory in Belgium for both national and international transport agreements for the transportation of goods by road.*

			The obligation to issue a CMR conignment note has in Belgium been extended to agreements for national transport.		
2.2	YES	A*rticle 8 CMR Convention on the taking over of the goods. The carrier must check the accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and the apparent condition of the goods and their packaging.* T*he carrier must make reservations with regard to the apparent condition of the goods and their packaging if the statements in the consignment note are not correct, or if the carrier is unable to check the accuracy of the statements and the apparent condition of the goods and their packaging.*	I*n belgian law, the CMR provisions are applicable to agreements on agreements for both national and international transportation of goods by road.*	The requirement of article 8 of the CMR, that the reservations must be explicitly accepted by the sender, only applies to the reservations that relate to the correct statements with regard to the number of packages, their brands and numbers and the external condition of the goods and their packaging. Commercial Court Gent 23 March 1993 The carrier must check the external condition of the goods and theid packaging at the start of the transport and, if necessary, make a reservation. If the loading and stowage of the goods carried out by the sender were not so manifestly bad that it was a mistake for him to start the transport under such circumstances, the lack of reservation does not preclude	T*he carrier is obliged to check the accuracy of the statements as to the number of packages and their marks and numbers and the apparent condition of the goods and their packaging.* *If the carrier does not make any reservation on this, the statements on the consignment note are ought to be correct. The carrier can be held liable if the statements on the consignment note are not correct, but if he didn't make any reservations on this.* *The carrier cannot invoke the liability exonerations if he makes express false statements. This is in Belgium known under the general principle "fraus omnia corrumpit". On this basis, a carrier can never rely on his deception to obtain the*

				him from the ground for exemption from article 17.1 CMR Convention. Commercial Court Antwerp 19 June 1992	*application of a rule of law in his favor.*
2.3	YES	A*rticle 8 CMR Convention stipulates that the carrier is bound to accept the goods, and where necessary has to make reservations as to the apparent good condition of the goods and their packaging.* *Article 13 CMR Convention stipulates that the carrier is liable to deliver the goods on the place desgniated for delivery.*	In belgian law, the CMR provisions are applicable to agreements on agreements for both national and international transportation of goods by road.	The return of the goods to the original sender as a result of damage occurring during transport cannot be regarded as "delivery" of the goods. Delivery will only take place when the goods have been delivered at the place specified in the contract of carriage. C*ourt of Appeal Brussels 28 June 1969, E.T.L., IV, 925.*	U*nder Belgian law, the carrier has the same obligations to check the quantity and the apparent good order and condition of the goods under the CMR Convention.* *The carrier is bound to accept the goods and make reservations where necessary.* *According to article 13, the carrier is bound to deliver the goods to the consignee. Delivery must take place at the place designated for delivery.*
2.4	YES	T*he carrier must make reservations at the moment of taking over the goods. The reservation must be made after checking the accuracy of the statements in the consignment note as to the number of*	In belgian law, the CMR provisions are applicable to agreements on agreements for both national and international transportation of goods by road.	*If the carrier recieves the goods with a consignment note on which the manner of packaging and the quantity of the goods is indicated in very precise terms, he cannot claim that he was unable to check*	T*he carrier is bound to check the accuracy of the statements in the consignment note regarding the number of packages and their marks and numbers and the apparent condition of the packaging.*

		packaging and their marks and numbers and the apparent condition of the goods and their packaging.		*the correctness of these particularities since he received a closed and sealed container. He should have made a reservation on this.* *Commercial Court Antwerp 15 March 1991* *A pre-printed reservation in the CMR consignment note in the wording: "with reservation regarding content and condition of container / trailer" is too general and abstract in nature and would amount to a unilateral disclaimer by the road haulier. This has no legal effect. "* *Commercial Court Antwerp 17 July 1997* *The reservations on receipt of the goods must be justified in order to have some effect. A reservation pre-printed on the consignment note is not justified and does not meet the requirements of art. 8 CMR.*	*The carrier cannot avail himself by stating that he did not have the opportunity to check these details (f.e. if the container was locked and sealed). In that case a reservation should be made on the fact that the statements could not be checked.* *However, other statements are enforceable, even if they are not explicitly accepted by the sender.* *If the carrier does not make any reservation on this, the statements on the consignment note are ought to be correct. The carrier can be held liable if the statements on the consignment note are not correct, but if he didn't make any reservations on this.*

				Court of appeal Brussels 21 December 2000.	

3. Customs formalities (art. 11 & 23 sub 4)

3.1. Is the carrier responsible for the proper execution of customs formalities with which he is entrusted?
3.2. Is the carrier liable for the customs duties and other charges (such as VAT) in case of loss or damage?
3.3. Nice to know: Is a carrier liable for the loss of customs (or other) documents and formalities?
3.4. Nice to know: Is a carrier liable for the incorrect treatment of customs (or other) documents and formalities?

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
3.1	YES	*See Article 11 CMR Convention for the obligations of the sender and the carrier regarding customs.*	*As long as the parties do not deviate from the provisions of the CMR Convention, the parties are free to impose certain obligations on the carrier. F.e. it is possible to have the carrier carry out certain customs obligations.* *Article 1134 of the Belgian Civil Code stipulates that parties are free to regulate their contractual relationships and that all agreements that are lawfully entered into are binding to those parties.*	*If additional instructions have been provided regarding a customs clearance, this obligation is inherent to the transport order and subject to the provisions of the CMR Convention.* *Court of Appeal Antwerp, of 29 June 2009, nr. 2002/AR/3012, EUR. Vervoer., 2010, vol. 2, 182.* *If the carrier is ordered to perform the customs formalities, there is no autonomous agreement, but an order intertwined with the transport agreement on which*	*In principle, the sender is responsible for attaching the necessary documents to the consignment note or for placing them at the disposal of the carrier. The sender shall also furnish the carrier with all the information which he requires.* *It is possible to entrsut the carrier with the execution of customs formalities. The carrier is in that case responsible for the correct execution of the to him entrusted tasks.*

				the prescription under art. 32 CMR Convention applies. *Court of Appeal Antwerp 15 May 2006, nr. 2003/AR/1564, Eur.Vervoerr. 2006, vol. 5, 658.*	
3.2	YES	See Article 11 CMR Convention for the obligations of the sender and the carrier regarding customs.	N*o specific Belgian national legislation is applcable.* A*ccording to Belgian Case law, the customs duties and other charges (such as VAT) are to be regarded as costs that are necessarily related to the transport in case of loss or damage.*	V*AT that becomes due as a result of the removal of the transported goods from customs supervision due to theft, does not qualify for a refund under art. 77 of the VAT Code and falls under the provisions of art. 23.4 CMR Convention as costs that are necessarily related to the transport.* *Court of Appeal Antwerp, 15 June 2009, nr. 2008/AR/1352, Eur. Vervoerr. 2010, vol. 2, 199.*	According to Belgian Case law, the customs duties and other charges (such as VAT) are to be regarded as costs that are necessarily related to the transport in case of loss or damage *(according to article 23.4 CMR Convention.*
3.3	YES	See Article 11 CMR Convention for the obligations of the sender and the carrier regarding customs.	A*ccording to the Belgian law of 18 July 1977 on General Customs and excices, the carrier can be held criminally or administrative liable if he cannot present tha customs authorities the correct documentation at the moment of loading or delivery. As a result of this, the goods can be*	T*he obligation of the carrier to clear customs documents at every bordercrossing is inherent to international transport, so that this obligation is not separate from the transport agreement. The assessment of the carrier's responsibility in this respect is governed by the*	T*he obligation of the carrier to perform the customs formalities cannot be separated from the transport agreement. The carrier has the obligation to be able to present the customs documents at each point during the execution of the transport agreement.*

			confiscated and the carrier can be charged with a penalty of five to ten times the amount of the due customs or excices.	*provisions of the CMR Convention.* *Court of appeal Gent, 5 January 2004, JDSC 2006, 153.*	*In case of loss by the carrier of the customs documents, the carrier will be liable according to the provisions of the CMR Convention.*
3.4	YES	See Article 11 CMR Convention for the obligations of the sender and the carrier regarding customs.	*Under Belgian law, the carrier can be held liable if he cannot provide the the customs authorities all the necessary documents. Not being able to proide the customs authorities the necessary (correct) documents can lead to a customs debt for the carrier.* *There is however, no specific derogation of article 11 CMR Convention under Belgian law. The carrier can thus hold the sender liable for incorrect statements in the customs documents.*	*There is no specific case law on this topic.*	Under Belgian law, the carrier can be held liable if he cannot provide the the customs authorities all the necessary documents. Not being able to proide the customs authorities the necessary (correct) documents can lead to a customs debt for the carrier. There is however, no specific derogation of article 11 CMR Convention under Belgian law. The carrier can thus hold the sender liable for incorrect statements in the customs documents.

4. The right of disposal (art. 12)

4.1. To what extent can the consignee and consignor execute their right of disposal?

Under Belgian law, the right of disposal is governed by the provisions of the CMR Convention, which are also applicable to agreements regarding national transport. This due to article 51, §1 of the Law of 13 July 2015 which makes the CMR Convention also applicable to all agreements for the national transportation of goods by road.

The sender of the goods has the right of disposal and the right to receive damages if the goods are lost. This has been confirmed in Belgian case law of the Court of appeal of 10 March 2008 (RW 2009-10, vol. 35, 1473) which also states that the purchase agreement between the sender and the buyer is completely separate from the CMR transport agreement and its proper execution.

The carrier cannot invoke the purchase-sales agreement to avoid its contractual liability from the CMR transport.

4.2. Nice to know: To what extent is the carrier liable if he does not follow instructions as given or without requiring the first copy of the consignment note to be produced (art. 12.7)?

As a result of article 51 § 1 of the Law of 13 July 2015, article 12.7 of the CMR convention is fully applicable in the Belgian legal order. This applies to both the international transport of goods by road and the national transport of goods by road.

There is no specific provision in Belgian legislation that further regulates this matter.

No specific case law has been found that deals with a case under this article.

5. Delivery (art. 13, 14, 15 & 16)

5.1. Can the obligation to ask for instructions lead to liability of the carrier? (art. 14, 15 & 16)

5.2. Nice to know: Are there circumstances that prevent delivery as mentioned in art. 15 for which the carrier is liable?

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
5.1	YES	I*f the carrier is confronted with any kind of incident during the transportation of the goods, he explicitly has to ask instructions for instructions to either the sender or the consignee, this*	If the carrier is confronted with any kind of incident during the transportation of the goods, he explicitly has to ask instructions for instructions to either the sender or the consignee, this	T*he carrier who notices during the transport of a reefer containter that there is some kind of defect with the cooling elements of this trailer, which is even followed by a small*	T*here is no doubt abouth the fact that the carrier has to ask instructions to whoever has the right of disposal of the goods if he is confronted with any kind of incident which result in the*

		depending on who has the right to dispose of the goods in accordance to article 12 CMR. *If the carrier however is confronted with circumstances which prevent the delivery of the goods at the place designated for ddelivery, instructions have to be asked by the carrier to the sender.* *The carrier can be held liable to damages that can occur as a result of the lack of asking for i instructions to the sender of consignee, as well as to damages that may occur when the carrier does not follow the instructions given by the sender or consignee*	depending on who has the right to dispose of the goods in accordance to article 12 CMR. If the carrier however is confronted with circumstances which prevent the delivery of the goods at the place designated for ddelivery, instructions have to be asked by the carrier to the sender. The carrier can be held liable to damages that can occur as a result of the lack of asking for i instructions to the sender of consignee, as well as to damages that may occur when the carrier does not follow the instructions given by the sender or consignee	*explosion, and who does not give notice of this fact to the sender, neither has asked for instructions, but on the contrary proceeds with the transport and delivers the container at the quay isnot only liable for damages, based on a contractual failure but also based on an infracftion on article 14, 1. CMR* *Antwerpen (4e k.) nr. 2005/AR/1210, 14 mei 2007, EU Vervoerr.2008, ed. 1, 99.*	*fact that the transport cannot be executed as foreseen.* *the carrier has to ask for such instructions within a reasonable time period. After that instructions have been asked, the carrier again has to wait for an appropriate time for a respons to his demand for instrcutions. Given the absence of any criterium on this matter, the time period being consedered reasonable or appropriate is to be evaluated taking into account the specific circimstances.* *In the absence of any instructions, the carrier cannot be held liable.* *Further, however the carrier is to be held liable for damages if no instructions are asked or if this instructions are not followed, this does not mean that the lack of the demand of instructions automatically results in liablility of the carrier. There is still a necessity of damages or a loss of chances for the sender/consignee.*

5.2	YES	I*n accordance to art. 16 CMR, the carrier shall be compensated for the costs of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act or neglect of the carrier.*	N*o specific derogation from CMR-convention*	N*o specific landmark cases are to be found on this matter*	i*t is thus to be concluded that the carrier can be considered liable for extra costs that result from his own wrongdoing. The element 'wrongdoing' is again not specified in CMR, but is in belgian jurisprudence interpreted as 'all circumstances to which the carrier has to comply, given the provisions of the transport contract.'*

6. Damage (art. 10 & 30)

6.1. Is packaging (the container, box etc.) considered part of the goods, if provided by the shipper/cargo interest?

Yes/No	Convention	National law	Landmark cases	Clarification
YES	N*o specific provision on this matter is included in CMR-convention*	N*o specific provision on this matter is included in national Law*	A *container is in principle a transportation - loading or stowage device and an only be considered as packing of the goods and when it is closed and sealed by the sender, in the absence of control of the carrier, without being opened during the transport and is mentioned on the consignement note as a conatiner, withouth any*	I*n belgian case law, packaging is generaly to be considered to be parts of the goods, if this is provided by the shipper.* *However, regarding transportcontainers belgian case law can variate given the specific cirumstances.*

			specification of the included goods.If this conditions are not met, a defiency or lack in the container cannot be considered as packing of the goods. As a result the carrier cannot be relieved of his liablity in accordance to art. 17.4. CMR if this conditions are not met. *Koophandel Antwerpen, 14 february 2000, Frigo Traffic / Frostimpex* *A container 'Van-Box' is specific kind of container designed specificly to tranpsort lquid chemicals. a container is no transportation device but packaging provided by the sender. Consequently, This container is considered a transported good and claims for damages to this container during an international transport operation are subject to CMR convention* *Appeal Court Antwerp, 19 december 1995, Transport Beaugier / BP. Belgium,*	*Despite the caselaw being very diferent, a common thread can be concluded. More specific, if the container is and remains closed, with the carrier having no control regarding the content and state of the goods, the container tends to be considered as a part of the goods.*

6.2. To what extent Is the consignor liable for faulty packaging? (art. 10)

The consignor can be held liable by the carrier for damages occuring to the material of the carrier or other goods, when this damage has occurred as a result of the faulty packaging.

However, the case law is very clear that the provsions of article 10 CMR are striclty limited to fawlty packaging sensu strictu. A faulty stowage of the goods, even if conducted integrally by the consignor, resulting to damages to the goods of the carrier cannot be claimed from the consignor on the basis of art. 10 CMR.

Further, belgian case law is very strict on the fact that the absence of any provision regarding the state of the packaging on the consignment note at the moment he takes the goods in his posession. If no provision is made on the consignment note at the moment the carrier takes the goods in his posession, he has waived his right to claim possible damages occurred during the tranport as a result of the faulty packaging. Only in very specific circumstances, in which it is proven that the packaging did not look faulty, or that it seemed to be according normal standards at the moment the carrier took posession, damages could still be claimed to the consignor, even if no provision is made.

Nevertheless, the absence of a provision on the consignment note does not influence the right of the carrier to relieve his liablity for damages to the transported goods in accordance to art.17, sub. 1 and 4 b) (Cass. (1e k.) AR C.06.0202.N, 27 april 2007 (Transport Bellekens en Kinderen / Van Hoeck & Co)

6.3. When is a notification of damage considered to comply with all requirements? (art. 30)

In case of apparant loss or damage no formal requirement is necessary if the notification is made at the moment of the delivery of the goods. In such case, even verbal notification, if such notification is proven by the factual circumstances, so being the immediate return of the goods to the shipper, corresponding acts by the shipper, a later referal to the verbal notification which is not protested by the carrier, or in some circumstances the simple refusal of the goods.

The provisions or notification regarding not apparent damage has to be done in written. A simple verbal notification is not considered sufficient.

Notifactions are allways to be done directly to the carrier. However, the observation of the damages are not necessarily to be done contradictory.

The notifications are not to be considered to formally in Belgian case law. A simple notification in general refering to the damages is considered sufficient in belgian case law. No details regarding the nature or the cause of the damages are necessary. There can be concluded that there is an absolute absence of any formalities regarding the notification, when the notification is at least refering to the reason of the refusal.

The term of notification is not to be considered as an experation term.

6.4. Nice to know: What is considered to be 'not apparent damage'? (art. 30 sub 2)

Belgian case law is considering as not apparent damage, damages that only is established after that the goods are taken out of their packaging, or damages that is only discoverd after a contamination is established in case of bulk/liquids.

6.5. Nice to know: When is counterevidence against a consignment note admitted? (art. 30 sub 1)

There is no specific limit in belgian case law regarding the admissablilty of counterevidence.

The absence of reservations on the consignment note only constitutes a presumption of conformity of the goods and quantity. Counter evidence however is still admissible. Such counter evidence can be delivered by all possible means.

7. Procedure (art. 31 – 33)

7.1. When do the courts or tribunals of your country consider themselves competent to hear the case? (art. 31 & 33)

Belgian courts first of all consider whether or not there is an agreement between the parties concerning the competent court.

If the court establishes that there is an agreement between the parties about the competent court, but this agreement excludes the other courts that would be competent under art. 31 CMR, Belgian courts will judge that this agreement is void because it is in violation with art. 41 CMR.

"If the CMR is applicable, a jurisdiction clause in which a court of a treaty state is exclusively declared competent is contrary to Article 31.1 of the CMR. Such an exclusive jurisdiction clause is void (art. 41.1 CMR).If there is no such agreement Belgian courts apply the treaty strictly. The court will assess whether or not they are the court that is competent for the place of the registerred office of the defending party or for the place where the goods were taken over by the carrier or the place designated for delivery." (Court of Appeal Ghent, 5 February 2007, TBH 2008, 7, 628)

Under Belgian law the court can establish that there is an agreement between parties to appoint a compentent court if the invoice(s) of the claimant contain a clause that appoints a competent court. If the defending party had knowledge of the clause and did not protest the invoice (within a reasonable time), the Belgian courts will assume that the defendant has accepted the invoice and the competence clause.

The courts apply the rules of competence of the courts under the CMR-treaty strictly. If there is no agreement between the parties to appoint a compent jurisdiction, the courts will assess wether or not they are competent for the place of the registerred office of the defendant or for the place of the taking over or the delivery of the goods.

However, the fact that there would be an agreement between the parties for a competent jurisdiction, does not mean that the other courts that are competent under the CMR-treaty cannot be adressed as a competent court to start a judicial procedure. It is possible to adress another competent court than the court under the agreement between the parties.

"It follows from Article 31 (1) of the C.M.R. Convention that if the parties have designated a particular court in their contract, this cannot rule out the possibility that the dispute may be brought by a claimant before one of the other courts referred to in this article." (Court of Cassation, 21 January 2010, Arr.Cass. 2010, 1, 217)

7.2. Is there any case law in your jurisdiction on the period of limitation? (art. 32)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	All claims that are based on a transport that is subject to the CMR treaty are subject to a period of limitation of 1 year. The period of limitation shall begin to run: (a) In the case of partial loss, damage or delay in delivery, from the date of delivery; (b) In the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which the goods were taken over by the carrier; (c) In all other cases, on the expiry of a period of three months after the making of the contract of carriage.	All claims that are based on a transport that is subject to the CMR treaty are subject to a period of limitation of 1 year. The period of limitation shall begin to run: (a) In the case of partial loss, damage or delay in delivery, from the date of delivery; (b) In the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which the goods were taken over by the carrier; (c) In all other cases, on the expiry of a period of three months after the making of the contract of carriage.	"General matters -In contrast to the liability and burden of proof provisions of the CMR, which only applies to claims for loss, damage or delay to the goods transported, the provision of article 32 paragraph} letter c CMR is of general application and applicable to any claim, whatever its subject, arising from a transport subject to the CMR" (Court of First Instance Antwerp, 30 December 1974, JPA 1974,367) "Even if the documents attached to the limitation claim are copies, a mere refusal of liability on the part of the carrier is not enough to make the limitation period run again. Since Art. 32 paragraph 2 CMR does not make a distinction according to the nature or content	first case: all other contractual claims that can be based on the CMR transport are subject to the period of limitation of art. 32, 1., c). So not only claims concerning loss, damages or delay are subject to the CMR period of limitation. second case: it is not sufficient to protest the written claim in order to stop the suspension of the period of limitations, the documents attached to the claim also have to be returned. third case: the written claim that can suspend the period of limitations only applies to claims concerning loss, delay or damages. It is not possible to suspend the period of limitations for any other claim.

		Under Belgian law the period of limitation can be interrupted by a summons or other judicial claim, a recognition of guilt or a notice of default by an attorney or bailiff. The period of limitation can be suspended by a written claim. To end this suspension the claim has to be protested and the documents have to be returned. This suspension with a written claim only applies to claims for delay, damages and losses.	of the attached documents, they must always be returned to put an end to the suspension of the limitation period." (Court of Appeal Antwerp, 2 June 2003, Eur.Vervoerr. 2004, 3, 407) "A written claim within the meaning of Article 32.2 of the CMR only applies to claims for loss or damage or delay, so a written claim to the carrier due to unfilled COD orders does not constitute a written claim that suspends the course of the limitation period." (Court of First Instance Tongeren, 8 juni 2007, TBH 2008, 7, 662)	

7.3. Nice to know: Is it possible to award a single court or tribunal with exclusive competence to hear a CMR based case? (art. 31 & 33)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	When a single court is awarded exclusive competence, the clause or agreement in which the competence is award is void and not applicable	When a single court is awarded exclusive competence, the clause or agreement in which the competence is award is void and not applicable.	"If the CMR is applicable, a jurisdiction clause in which a court of a treaty state is exclusively declared competent is contrary to Article 31.1 of the CMR. Such an exclusive jurisdiction clause is void (art. 41.1 CMR).If there is no such agreement Belgian courts apply the treaty strictly. The court will assess whether or not they are the court that is competent for the place of	The provisions of the CMR Treaty are mandatory. When one court is awared exclusive competence, the other courts competent under art. 31 CMR are excluded and so the mandatory character of the CMR Treaty is violated.

			the registerred office of the defending party or for the place where the goods were taken over by the carrier or the place designated for delivery." (Court of Appeal Ghent, 5 February 2007, TBH 2008, 7, 628)	

8. Carrier liability (art. 17 – 20)

8.1. Who are considered to be 'agents, servants or other persons of whose services the carrier makes use for the performance of the carriage acting within the scope of their employment? (art. 3)

Under Belgian law the carrier is liable for the actions or omissions of his own employees, the subcontractors, the persons or party appointed by the carrier to take care of the loading and unloading of the goods and in general every party appointed by the carrier to ensure the execution of the transport order.

"From the text of the Préambule of the CMR Treaty it arises that the Treaty has to have the broadest uniformity, and more specific concering the liabilities of the carrier, reason why the notion "carrier" has to be interpreted as broad as possible. That is why the international legislator has implemented in art. 3 CMR that all actions and omissions of persons that are appealed upon by the carrier for the execution of the transport order have to be considered as actions or omissions of the carrier him self." (Cour of Appeal Antwerp, 25 February 2000, JPA 2000, 247)

8.2. To what extent is a carrier liable for acts committed by parties as referred to in art. 3?

The carrier is entirely liable for the actions or ommissions of the parties referred to in art. 3 CMR and this responsibility of the carrier is assessed accordingly to the provisions of the CMR-Treaty. For the own responsibility of the parties mentionned in art. 3 CMR one must look at the national regulation (Court of Appeal Ghent, 17 November 1967, ETL 1969, IV, 145).

Art. 3 CMR only aims to establish for the responsibilty of the carrier it is of no interest whether or not the carrier carrier executed the transport himself or made appeal to another party for the execution of the transport.

8.3. To what extent is a carrier deemed liable for damage to or (partial) loss of the goods he transported? (art. 17, 18)

Under Belgian law the carrier has a result obligation for the proper delivery of the goods from the moment of the receipt of the goods until the delivery of the goods.

If the carrier does not achieve the result to which he has committed himself, i.e. the proper delivery, the carrier will be deemed responsible.

By consequence, the carrier is in principle entirely liable for damage to or loss the goods occurred during the receipt and delivery of the goods. Only if the carrier can proof he can claim one of the grounds of exemption of liability under art. 17 the carrier can escape liability.

"The CMR carrier commits to an obligation of result, which automatically imputes a presumption of liability in the event of loss or damage of the goods occurring between the time of receipt and the time of delivery (Art. 17.3 CMR)." (Court of Appeal Antwerp, 19 October 2009, Eur.Vervoerr. 2010, afl. 4, 426)

8.4. If the transported goods cause damage in any way to other goods, is the damage to those other goods considered to be covered by the CMR?

8.5. Nice to know: If a defect or ill-use of a trailer or container is the cause of the damage, is the carrier considered liable? In other words, are the trailer or container viewed as part of (packaging of) the goods or as part of the vehicle? (art. 17 sub 3)

8.6. Is there any relevant case law on art. 20, 21 or 22?

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
8.4	NO	U*nder the CMR Convention the carrier is liable for all damages to the transported goods. Thus, it is important to establish wether or not the damaged goods can be designated as transported goods or not.*	Under the CMR Convention the carrier is liable for all damages to the transported goods. Thus, it is important to establish wether or not the damaged goods can be designated as transported goods or not.	"It follows from Articles 17, 23 and 25 of the CMR Convention that the CMR Convention only regulates the liability of the carrier for the loss or damage of the transported goods and for the delay in their delivery.	After some ambiguity in the case law concering this discussion, the Court of Cassation finally ended the discussion by stating that the CMR does not hold an exclusive regulation for the

		Only damage to the transported goods will qualify as damage covered by the CMR Convention. *Transported goods are all objects to be moved by the carrier, including live animals, excluding passenger transport.* *If the damages are caused to goods that are not transported goods, one must look at the national law to determine who is responsible and to what extent.* *By consequence, if the transported goods cause damage to other transported goods, the CMR Convention will apply. If not, national law will apply.*	Only damage to the transported goods will qualify as damage covered by the CMR Convention. Transported goods are all objects to be moved by the carrier, including live animals, excluding passenger transport. If the damages are caused to goods that are not transported goods, one must look at the national law to determine who is responsible and to what extent. By consequence, if the transported goods cause damage to other transported goods, the CMR Convention will apply. If not, national law will apply.	The CMR Convention does not regulate the liability of the carrier for other damage and in particular not for the damage caused to goods other than the goods transported, which is governed by the applicable national law." (Court of Cassation, 23 January 2014, Arr.Cass. 2014, afl. 1, 209) "A semi-trailer can be a good within the meaning of Article 1.1 of the CMR if it does not belong to the carrier, but to the client who concludes an agreement with the carrier for the transport thereof. In the event of theft, the carrier is liable for the loss of the goods in accordance with Article 17.1 of the CMR, unless he proves that the loss was caused by circumstances that he could not have avoided and the consequences of which he could not have prevented (Articles 17.2 and 18.1 CMR)." (Leuven Commercial Court, 27 November 2007, TBH 2008, vol. 7, 667)	liability of the carrier. The CMR convention only contains the regulation of the liability of the carrier concering the transported goods. Damage to or loss of other than the transported goods is not regulated by the CMR Convention. The liability of the carrier for damage to or loss of other than transport goods will be assessed under the applicabe national law. In principle, the vehicles and trailers used to transport the goods are not considered to be transported goods. However, a trailer can be considered to be a transported good e.g. when the carrier has to pick up a trailer not belonging to him that is already loaded with the goods. In this case the trailer can be considered to be part of the goods that have to be transported. By consequence, in case the transported goods cause damage to the trailer, the damage to the trailer will be governed by the CMR Convention.

8.5	YES	The carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage, or by reason of the wrongful act or neglect of the person from whom he may have hired the vehicle or of the agents or servants of the latter Under the CMR Convention "vehicles" means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Convention on Road Traffic dated 19 September 1949. Trailers will thus be considered to be "vehicles" in the meaning of art. 17.3 CMR.	In principle, trailers used to transport the goods are not considered to be transported goods, but vehicles in the sense of art. 1.2 CMR. They are a vehicule with purpose to transport the goods that have to be transported. However, trailers can be considered to be part of the transported goods e.g. when the carrier simply has to pick up a trailer not belonging to him that is already loaded with the goods. In this case the trailer can be considered to be part of the goods that have to be transported. The same applies to containers. E.g. when the carrier has to pick up a loaded container with an empty chasis, the contaienr will be considered to be part of the transported goods. In the meaning of art. 17.3 CMR however the trailers and containers will be considered to be part of the vehicle and not part (of the packaging) of the transport goods. Under packaging one must understand the normal and usual packaging for the goods. Thus when the transported goods are damaged	"If a fire arises on the load due to friction of a flat tire, the carrier is responsible for this as this is a "defect of the vehicle" within the meaning of article 17 paragraph 3 CMR and the carrier must be responsible for the defects of his material." (Commercial Court Antwerp 24 March 1976, JT 1976, 525)	For art. 17.3 CMR the trailers and containers are considered to be "vehicles". Defects to theses "vehicles", even if the vehicle is property of someone else, cannot be invoked by the carrier to escape liability. In thise case the trailers had a flat tire which caused a fire. The trailer was considered to be a defective vehicle so the carrier could not escape liability for the fire.

			by a defect or ill-use of the trailer or container, the carrier will be liable as he will not be able to appeal to art. 17.3 or 17.4.b CMR		
8.6	YES	See text of the convention.	National law is an exact copy of the text of the convention.	"The appellant, who has acted as a substitute carrier, cannot rely on the 60-day period of art. 20, 1 ° CMR which concerns 'lost' goods, in the sense of 'disappeared'. In the present case the meat products were spoiled and destroyed because of the delay." (Court of Appeal Ghent, 19 December 2005, Eur.Vervoerr. 2007, afl. 2, 275) "In the event of non-execution by the carrier of the cash on delivery clause included in the bill of lading, the carrier is liable to pay compensation up to the amount of the cash on delivery clause, but this obligation to pay is not legally due and up to that amount. The sender must prove that he did indeed suffer damage and up to what amount." (Court of Appeal Antwerp 19 November 1991, ETL 1992, p. 127) The consignor cannot claim that the carrier was aware of	Art. 20 CMR states that entitled party has to right to assume the goods are lost, withour any other proof, when the goods are not delivered by the carrier within 60 days after the taking over of the goods when there was no specific date agreed upon for the delivery. In this case the subcarrier tried to invoke this article but the court of appeal decided that only the entitled parties (the sender and/or adressee of the goods) can invoke this article. If the carrier does not fulfil the obligation to collect the sum under the cash on delivery clause he will have to pay the damages to the entitled party. However the obligation to pay the damages is not an obligation by law. The entitled will have to proof his damages and the sum of the cash on

				the nature of the hazard and the precautions to be taken by submitting a document signed by the carrier after the load, stating the name of the product to be transported together with a reference to the text of the Annexes to the CIM Convention on International Carriage of Goods by Rail and when, moreover, this document indicates that the goods should be transported upright"	delivery clause is the limited sum of the damages. The third case is a judgement of the Commercial court of Antwerp (JPA 1975-76, 70). The court decided that it was not sure that the carrier was informed about the exact nature of the dangours and the precautions to take notwithstanding the fact that the sender let the carrier sign a document with some information on it. By cosequence the infomartion duty of the sender is applied very stricly.

9. Exemption of liability (art. 17 sub 2 & 4)

9.1. When are there 'circumstances which the carrier could not avoid and the consequences of which he was unable to prevent'? (art. 17 sub 2)

This ground for exemption is very similar to what is understood by Belgian law under force majeure.

The fact is that in order for this ground for exemption to be accepted, the circumstances invoked must be unavoidable and the consequences not forseeable.

In order for a circumstance within the meaning of Article 17.2 CMR to arise, the incident should not be absolutely unforeseeable, but it should be checked whether a normally prudent carrier has taken the normal precautions that should have been taken in the circumstances and whether he was reasonably unable to prevent the damage (Court of Appeal Antwerp 7 November 1995, ETL 1998, 114).

Among other things, the following conditions were accepted: floods, road traffic accidents, abnormal weather conditions, etc.

On the other hand, the following were not accepted: mistakes made by operators or drivers, strikes, traffic jams, etc.

It is i, fact very difficult to draw a line in this regard as to what circumstances are and what circumstances are not considered as grounds for exemption.

After all, each time it must be determined in concreto whether the circumstance was completely unforeseeable and completely unavoidable for the carrier.

Thus, it not possible to determin wich circumstance is always unavoidable and unforseeable and which it is not. It possible that in one case a circumstance will be accepted and will lead to an exemption of liability, but that in another case the same circumstance will not be accepted. A good exemple of this is theft (see question 12).

The be able to invoke a circumstance as a ground for exemption of liability the carrier will have to proof that he has taken all reasonable precautions ass any other normally prudent carrier (the so called Bonus Pater Familias) would have and that it was impossible to prevent the damages, loss or delay.

It will be in any case incumbent upon the carrier to deliver the proof of the circumstance invoked, the unavoidable and unforeseeable caracter and the causal relation between the damages, the loss or the delay and the circumstance (18.1 CMR).

9.2. To what extent is a carrier freed from liability? (art. 17 sub 4)

In accordance with art. 17.4 ° CMR the carrier will be exempted of its liability under the following grounds: use of open and not covered vehicles; lack or inadequacy of the packaging of the goods that by their nature are exposed to quality loss or damage when they are not or poorly packaged; handling, loading, stowing or unloading of the goods by or on behalf of a loading party; the own nature of the goods; insufficiency or inadequacy of marks or numbers on the packages; transport of living animals.

The burden of proof fo the carrier for these special grounds for exemption is much lighter than this for the general grounds for exemption (see question 9.1). In order to provide evidence of a special ground for exemption, the carrier must not prove that the ground of exemption is the cause of the damages, loss or delay. There is a presumption of causal relationship for the special grounds for exemption. Once the carrier can prove the existence of one of the circumstances that entails a special ground for exemption, there is a suspicion that this is the cause of the damage, loss or delay, without the carrier having to prove this causal link. However, this presumption of causality is refutable in such a way that the cargo interested parties can prove that the special ground for exemption relied on by the carrier is not the cause of the damage, loss or delay.

1) Open and not covered vehicles: both conditions must be met at the same time and the carrier must also prove that this method of transport was agreed. Some case law go so far that this mode of transport must be explicitly stated in the consignment note, which of course has the advantage that any dispute about whether or not this mode of transport has been agreed upon is excluded. However, according to other case-law, it is sufficient for the carrier to be able to prove that the consignor was aware of this mode of transport and agreed to it.

This special ground for exemption does not apply to transport with an open vehicle that is not covered with a sheet if an unusual shortage or loss of packages occurs.

2) The lack of, or defective condition of packing: the packaging of the goods is the sender's obligations. The sender must package the goods to the extent necessary for transport. However, to the extent that the goods were insufficiently packaged in view of the normal transport risks, the carrier may invoke this as a special ground for exemption. It must be borne in mind that the packaging does not have to go so far that, for example, the goods would remain undamaged in the event of a major traffic accident. The carrier must therefore prove that there was a problem with the packaging in view of the circumstances of the transport so that he could be relieved of his liability.

This ground for exemption can only be invoked in case of transported goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed.

An important question is, if in order for the carrier to be able to invoke the special exemption ground, he should not have made a reservation on the consignment note regarding the packaging. It is, after all, part of the carrier's obligation to check before the transport the condition of the packaginInsofar as the defectiveness of the packaging was evident and should have been seen during the inspection, the carrier must have made a reservation to invoke the special ground for exemption. However, in so far as the carrier could not perceive the defect or could not know that, given the nature of the goods, the packaging was insufficient, he cannot make a reservation and he will nevertheless be able to invoke the special ground for exemption.

3) Handling, loading, stowage or unloading of the goods: this concerns the handling, loading, stowage or unloading of the goods by the sender, the consignee or a person acting on their behalf.

The carrier must prove that the sender, the consignee or a person acting on their behalf has carried out the handling, loading, stowing or unloading and that an error has occurred during this operation.

Each of the different actions (handling, loading, stowing or unloading) can lead to an exemption. The carrier only has to proof the existence of an error during one of these actions in order to enjoy the presumption of causal relationship between the error in the handling, loading, stowing or unloading and the damage, loss or delay.

It has already been noted above that, according to some case law, the carrier must also check the load and stowage, so that in the absence of reservations the carrier would not be able to invoke this special ground for exemption.

4) The nature of certain kinds of goods which particularly exposes them to loss or to damage: The summary of the damages given by the CMR (breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin) is not limitative.

The nature of certain goods cannot be confused with the inherent vice of the goods, which is a general ground for exemption under art. 17.2 CMR. A vice or defect is a caracteristic that is not inherent to the good it is an abnormal characteristic. The specific nature of the good is precisely the natural and normal condition of the good. When applying art. 17, 2 ° CMR must provide the carrier with unambiguous proof of the existence of the defect and the fact that this defect caused the damage. For art. 17, 4 ° CMR, the carrier must only prove that the damage may have been due to the specific nature of the goods. TV sets are not goods that by their very nature are exposed to a special fire hazard during transport. (Court of Appeal Ghent 10 April 2006, Eur.Vervoerr. 2006, afl. 6, 829)

It is to be noted that, precisely in view of the specific nature of the goods, special instructions will given with regard to transport. If there are such instructions, for example for food transport with refrigeration, and the carrier does not adhere to this, he will of course not be able to invoke the special ground for exemption.

5) Insufficiency or inadequacy of marks or numbers on the packages: The brands and numbers of the packages are among the mandatory mentions on the consignment note and the correct mention thereof is one of the obligations of the sender, who is liable for problems caused by this. It is therefore perfectly logical that, to the extent that the carrier can prove that the brands or numbers of the packages were incomplete or defective, he will not have to bear any liability for this.

6) The transport of living animals: This last exemption groundis explained by the completely unpredictable behavior of animals.

It should be recalled that the carrier can only rely on this special ground for exemption insofar as he proves that he has taken all the usual measures for the transport of living animals and that he has respected the special instructions given by the sender.

10. Calculation of damages (art. 23 – 28)

10.1. Is there any case law in your jurisdiction on the calculation of the compensation for damage to the goods (i.e. the carrier's limited liability)? (art. 23 – 28)

10.2. Nice to know: In relation to question 10.1: Is there any case law on the increase of the carrier's limit of liability? (art. 24 & 26)

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
10.1	YES	if a compensation is due for damages or (partial) loss of the goods, this compensation is to	CMR provisions are entirely applicable in national law	"The articles 17, 23 en 25 CMR convention state that CMR-vooncentin only sets rules fot	It is to be considered in belgian case law that the limitation in the convention to

		be calculated based on the value of the goods. This compensation can never be higher than 8,33 SDR per kg of gross weight short. The liablity of the carrier is in any way limited to damages or loss of the transported goods, as for the delays in delivery. In addition only carriage charges, customs duties and charges incurred in respect of the carriage of the goods shal be refunded. In the absence of evidence to the contrary, it is to be accepted that the value of the goods is set by the value as invoiced at the moment the transport starts. It is only at the absence of this that the value can be set by the 'normal value'	Notwithstanding the above, interest are in national law calculated in accordance to the national applicable 'legal interest rate', set ? eg. For 2018 &2019, this rate was 2% Further, national law has a possibility to capitalise the interests and damages.	the liability of the carrier for the loss of damage of the carried goods, as well as for the delay in delivery. CMR-convention does not regulate the liability of the carrier for other damages en more specific not for damages occurred to goods other than the transported goods. Consequently this last part is to be settled in accordance to national law" Cass. BE 23 januari 2014 (Tiense suikerraffinaderij, Allianz Belgium e.a. / De Dijcker, H.B.) "When the goods are transported under the regime of suspension of consumertaxes, the fiscal charges - such as VAT and excise duty- at the time of the reveiving of the goods by the carrier, this taxes are not yet a part of the marketprice of the goods. Consequently, the fiscal charges due resulting of the loss of the goods are no part of the value of the lost goods in the sence of art. 23.1 and 23.2 CMR-convention." Cass. 27 mei 2011 (Hawe Belgium nv / R.J. Reynolds Tobacco International, Security	the damages to the goods, and other relating to the transport of the goods made costs is to be interpreted quite strict for in CMR-convention. Nevertheless, by ruling that the damages to other than the transported goods is not regulated in any way in the CMR-convention and has thus to be settled in accordance to Belgian national law, this has opened a very wide gap of liablity for the carrier. Since Belgian national law does not provide a limitation regarding the transported goods or a limitation in calculation, the liablity for 'consequential damages' or damages to other than transported goods is considered to be a big risk for carriers if belgian law is applicable. Further, regarding the possibility of capitalisation of the interest as foresen in belgian national law, it is unsure if this could be applied on damages aranged by CMR

				Insurance Company of Hartford, Van Eycken bvba)	convention, since case law is diverse on this matter.
10.2	YES	Compensation for delay of delivery can never exceed the price of the carriage charges Against payment of surcharge to be agreed upon, the sender may declare a note for value on the consignment note, in which case the amount of the declared value shall be substituted for that limit. Interest shall be calculated ad 5% By making a declaration of special interest, against payment of a surcharge to be agreed upon, an amount of special interest can be agreed upon.	No specific derogations on the CMR-convention are set in belgian national law	"If the carrier is instructed explicitly to arrange 100% insurance coverage but he however lacks to do so, he cannot refer to art 23 CMR. Art. 23 is not applicable for damages arising from the non-respect of this additional obligation to take an additional theft-insurance." Antwerpen (4e k.) 6 juni 2005, 2002/AR/2347 "The value of 'special interest' can only be accepted if and for as far as it is mentioned on the consignment note. The sole fact that the carrier can know the value of the goods by other documents to his knowledge has no importance. The consignee cannot appeal to art. 4 CMR in order to deprive from this obligation." Koophandel Brussel 27.11.1985, Video Public/ Militzer & Munch Onuitg. If the value of special interest is not declared in the consignment	It is to be considered that the obligation of the value of special interest has te be interpreted very strictly and formally in Belgian case law. in the absence of any formal declaration on the consignment note no special interest value can be accepted.

				note, the consingee of sender cannot refer to the customs declaration document in order to proof the calue of special interst Cass. 10 february 1994, Freighting Cy/ Salamon Onuitg.	

11. Unlimited liability (art. 29)

11.1. When is a carrier fully liable ? (i.e. when can the limits of his liability be 'broken through'?) (art. 29)

Belgian national law is on this part - again - equal to the provisions in the CMR-convention.

the limits of liablity of the carrier is only to be broken through in application of art. 29 by wilful misconduct.

In accordance to Belgian law, there is a difference between wilful misconduct or of by default on his part which is to be considered as equialent to wilful misconduct. The term 'wilful misconduct is explicitly known in belgian law.

Belgian High Court (Cassatie) has ruled that, since the term 'wilful misconduct is known in Belgian law, Art. 29.1. CMR-convention excludes the possibility for the national judge to examine if a not-wilful default of the carrier would rule out the possibility of the carrier to appeal to the limitation of his liability.

In this specific landmark case, the Court ruled that the sole circumstance that the carrier had known to make a default and that he should have known that this fault could probably cause damages does not automatically implies that there is wilful misconduct. such a fault is not to be considered as equivalent with wilful misconduct. (Cassatie, 27.01.1995, T.R.W./ Rimutrans E.T.L. 1996, p. 694 en J.P.A. 1995, p. 99, as followed and confirmed by several lower courts)

Consequently the default to be considered equivalent with wilful misconduct is not accepted within the belgian legal order.

Only actual misconduct of the carrier of his agents and/or servants that is proven wilful is to be taken into account to exclude the limitation of liablity of the carrier.

The Belgian Courts and jurispridence are on this matter thus carrier friendly, since the limit of liablity of art. 23 CMR-convention will only be excluded if misconduct is actually proven to be wilfully committed by the carrier or its agents.

11.2. What is the interpretation of the phrase: 'wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct' (art. 29[1] CMR) under your jurisdiction?

Since the term 'default to be considered as aquivalent to wilful misconduct is not accepted in belgian law order/caselaw (see question 11.2.) this term is thus not interpreted in national case law, since this is not relevant.

Regarding the interpretation of the term 'wilful misconduct' this term is to be interpreted very strict in belgian case law. The wilful aspect has to be clear and proven, either by the acknowledgement of the carrier/his agents of servants, either by clear circumstanes which proof the wilful aspect of the misconduct.

As refered to supra no default or misconduct can lead to break through the liability if this is not explicitly proven wilful.

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	NO	Never	"The carrier is bound to an obligation of result. The carrier must therefore prove that the theft was inevitable, and a particularly conscientious carrier who has been extremely careful would not have been able to prevent the theft - as it happened here - either." (Court of Appeal Ghent 10 March 2008, RW 2009-10, afl. 35, 1473) There is no particular case law published for the specific situation were the goods are stolen while the carrier is driving. All case law concerns the situation of a parked vehicule for which the Belgian jurisprudence is very strict and reluctant to grant an exemption. It is the authors opinion that a theft while driving is a more dificult and rare situation than a theft while the vehicule is parked. Therefore a theft while driving will be less forseeable and avoidable than a theft when the truck is parked. For parking a truck, the driver has more options and choices to make himself (e.g. a secured parking or not, a parking with lots of other trucks, etc.). When it comes to driving the truck and following a

[4] Please indicate to what extent the case law in your country is in line, or whether case law differs from judgement to judgement.

			certain route, the driver has lot less choices to make for himself. Therefore in our opinion the carrier will be more likely to succesfully claim that the theft was unavoidable and unforseeable.
Theft during parking	YES	Sometimes	"The carrier is bound to an obligation of result. The carrier must therefore prove that the theft was inevitable, and a particularly conscientious carrier who has been extremely careful would not have been able to prevent the theft - as it happened here - either." (Court of Appeal Ghent 10 March 2008, RW 2009-10, afl. 35, 1473) Belgian case law is very strict in the application of art. 17.2 CMR and is very reluctant to grant the carrier the exemption of liability in case of theft. Beglian courts will always assess whether or not the carrier took all necessary precautions to prevent the theft. This means that the trucks have to be parked on a secured parking, that the trucks and trailers have to be locked, that an anti-theft-system or alarm has to be installed, etc. The carrier also has to know that in certain places or countries thefts are more likely to happen (e.g. Italy) so the carrier has to take this into account in planning the transport. "From the drivers' statements to the carabinieri it is stated that a truck was left at an unguarded parking lot at the rear of a restaurant along the motorway in Italy. There is no evidence that the vehicle was equipped with an anti-theft alarm system. By acting in this way, the carrier, who as a professional carrier must know that Italy is a country very susceptible to theft, takes a consequent risk and creates a situation that was previously inviting to theft." (Court of Appeal Gent 3 oktober 2005, TBH 2006, afl. 7, 732) "An armed robbery does not release the carrier from its liability if the driver leaves his vehicle at a parking lot on the motorway in the dangerous area of Rome-Naples-Bari." (Commercial Court Dendermonde 5 juni 2003, TBH 2005, afl. 5, 548) "*When a loaded trailer picked up by the driver, was parked at a fenced terrain of the sender and the driver slept in his cabine while some goods wore stolen at night from the trailer, the carrier is not liable because he took all necessary precautions to limit the damages. Especially when it seems from the declarations of the sender that the parking space was guarded." (Commercial Court Antwerp 8 January 1993, JPA 1995, 332)*
Theft during subcarriage (for example an unreliable subcarrier)	YES	Rarely	I*n case of theft of the goods during a transport executed by a subcarrier, Belgian courts will apply the same principles as if the carrier would have done the transport himself. As we have seen in previous parts of this work, the carrier is under Belgian law entirely liable for all actions and/or omissions of the subcarrier.*

			"The trailers were stolen while they were waiting in a fenced, but not guarded, parking space within the railway site of the Milan Certosa station for transit to the final destination. The parking was not equipped with an alarm system, and the trailers themselves were not equipped with an anti-theft system. The claim of the main carrier on the ground for exemption of art. 17, 2. CMR is rejected." (Court of Appeal Antwerp 18 April 2005, Limb.Rechtsl. 2010, afl. 2, 102) *Also, the carrier has to obligation to appeal to subcarriers that can be trusted with the transported goods. The fact that the carrier did not perform sufficient research whether or not the subcarrier and his employees can be trusted, will be one of the elements the court will take into account in the assessment whether or not the carrier took sufficient precautions and whether or not the theft could have been prevented.* *It is important that the complicity of the employees of the carriers and subcarriers can be excluded. "The exclusions of liablity of art. 17 and 18 and the liability limitation of art. 23 C.M.R. doe not apply when it is established that the person appointed by the carrier cooperated in the theft of a truck and trailer with load." (Commercial Court Turnhout 12 June 1997, Eur.Vervoerr. 1998, 124.)* *Therefore it is important that the carrier can proof that he did the necessary to appeal to trustworthy subcarriers. In case that an employee of the subcarrier is complicit to the theft, it is even possible that the court will judge that the limitation of liability of art. 23.3 CMR is not applicable because of "intent".* *"The limitation of liability, provided for in Article 23, 3 of the CMR Convention, does not apply in the case of intent or fault which, under the law of the court where the claim is pending, is equated with intent. This proof is provided if it appears that the pallet was stolen by the driver of the truck from the subcontractor of the contractual carrier or by the complicity of an employee of the latter who had the keys to the warehouse, in which the pallets were released pending of their onward transportation, while at the time of the facts the alarm system was not activated." (Court of appeal Brussels 1 December 2010, TBH 2012, afl. 8, 810)* *When it is established that there is "intent" the court will of course not grant exemption on the basis of art. 17.2 CMR.*
Improper securing/lashing of the goods	NO	Rarely	The CMR convention does not provide a regulation concerning the obligation of handling, loading, stowage or unloading and leaves this to national law. As the carrier is exempted from liability when the handling, loading, stowage or unloading was executed by the sender or consignee it is established that these tasks or not by law the responsibilty if the carrier.

			Under Belgian law there is a contractual freedom to regulate the obligations of the parties on this matter. "The judgment is well motivated when it rules that the carrier is solely responsible for the transport and that the accident is caused by a serious fall of the material during the loading and unloading, without it being possible to determine whether the accident occurred at the loading or unloading, before or after the actual transport, and then decides that it thus has been established that the carrier is not liable (art. 17.4, c and 18.2 CMR)" (Court of Cassation 19 May 2000, Arr.Cass. 2000, 944) By consequence when there is no contractual clause delegating the obligations concering the handling, loading, stowage or unloading the carrier just has to deliver the proof that the sender or consignee executed the handling, loading, stowage or unloading. "As the C.M.R. Convention does not specify who is responsible for loading and unloading and the driver has stowed the goods after loading by the shipper by applying a lashing strap, the liability becomes subject to the application of art. 17, paragraph 5, C.M.R. divided between carrier and sender, now that it appears that the cause of damage can be found both in the method of loading and in the manner of stowage. (Commercial court Antwerp 15 March 2002, Eur.Vervoerr. 2002, afl. 4, 511.) By consequence if the lashing/securing was not executed by the carrier and the carrier can proof the ground for exemption, the carrier will not be liable. Moreover, even when there is a contractual clause delegating the obligations concerning handling, loading, stowage and unloading, one still has to look at who had the factual lead of the operation. If the sender had to take care of the handling, loading, stowage or unloading, but the carrier had the factual lead and power over the operation, the carrier will not be able to escape liabilty and vice versa (Commercial Court Mechelen 18 November 1999, ETL 2000, 432). The carrier has no obligation to investigate the loading, handling, stowage and unloading by the sender or consignee. Therefore the carrier is not obligated to make a reservation on the consignment note. Notwithstanding the latter, there is some jurisprudence that states that the carrier has a control obligation for the visible defects of the load that can endanger the transport. If there would be such visible defects and the carrier did not act, the carrier can be held liable (Court of appeal Liège 2 October 1985, TBH 1987, 57)
Improper loading or discharge of the goods	NO		The CMR convention does not provide a regulation concerning the obligation of handling, loading, stowage or unloading and leaves this to national law.

			As the carrier is exempted from liability when the handling, loading, stowage or unloading was executed by the sender or consignee it is established that these tasks or not by law the responsibilty if the carrier. Under Belgian law there is a contractual freedom to regulate the obligations of the parties on this matter. "The judgment is well motivated when it rules that the carrier is solely responsible for the transport and that the accident is caused by a serious fall of the material during the loading and unloading, without it being possible to determine whether the accident occurred at the loading or unloading, before or after the actual transport, and then decides that it thus has been establisched that the carrier is not liable (art. 17.4, c and 18.2 CMR)" (Court of Cassation 19 May 2000, Arr.Cass. 2000, 944) By consequence when there is no contractual clause delegating the obligations concering the handling, loading, stowage or unloading the carrier just has to deliver the proof that the sender or consignee executed the handling, loading, stowage or unloading. "As the C.M.R. Convention does not specify who is responsible for loading and unloading and the driver has stowed the goods after loading by the shipper by applying a lashing strap, the liability becomes subject to the application of art. 17, paragraph 5, C.M.R. divided between carrier and sender, now that it appears that the cause of damage can be found both in the method of loading and in the manner of stowage. (Commercial court Antwerp 15 March 2002, Eur.Vervoerr. 2002, afl. 4, 511.) By consequence if the lashing/securing was not executed by the carrier and the carrier can proof the ground for exemption, the carrier will not be liable. Moreover, even when there is a contractual clause delegating the obligations concerning handling, loading, stowage and unloading, one still has to look at who had the factual lead of the operation. If the sender had to take care of the handling, loading, stowage or unloading, but the carrier had the factual lead and power over the operation, the carrier will not be able to escape liabilty and vice versa (Commercial Court Mechelen 18 November 1999, ETL 2000, 432). The carrier has no obligation to investigate the loading, handling, stowage and unloading by the sender or consignee. Therefore the carrier is not obligated to make a reservation on the consignment note. Notwithstanding the latter, there is some jurisprudence that states that the carrier has a control obligation for the visible defects of the load that can endanger the transport. If there would be such visible defects and the carrier did not act, the carrier can be held liable (Court of appeal Liège 2 October 1985, TBH 1987, 57)

Temporary storage	YES	Rarely	The liability of the carrier only ends after the goods have been delivered on the agreed place and handed over to the custody and care of the consignee with the latter's explicit or implicit aproval. As long as the goods are not delivered to the adressee the carrier remains liable under art. 17 CMR for any loss, damage or delay. The delivery of the goods does not imply necesseraly just he unloading of the goods. It is perfectly possible that the goods are already unloaded from the truck but not yet delivered to the adressee. When an incident occurs after the unloading, the carrier will be liable. "Delivery of goods is a legal concept that cannot be equated with the material unloading, but with the moment at which the addressee acquires the right of disposal over the goods. The C.M.R. transporter is not liable for damage after delivery." (Court of Appeal Antwerp 1 March 1999, Eur.Vervoerr. 2000, 544) However, if the sender has given the carrier instructions to deliver the goods at another location than the one that has been agreed upon, the delivery will take place at this other location and the liability will then come to an end. After this delivery the CMR liability will transform into a liability for the storage of the goods according to the applicable national law (art. 16 CMR). In any case, in case of temporary storage the carrier will be liable as long as there has not been a "delivery" of the goods in the sense of the CMR Convention. In case of temporary storage withour any instruction of the sender, the carrier will be liable for damages, losses or delay.
Reload/transit	YES	Rarely	If with reload/transit the situation is alluded in which the carrier has to load the goods in another vehicle, the carrier will be held liable if the transport did not yet come to and end and thus there has not been a "delivery" (see higer under temporary storage). If the carrier just reloads the goods in another truck and continues the transport to the destination, the carrier will be liable for the reload as the carrier did the reloading himself (see higher under improper loading). The same a*pplies* when the carrier reloads the goods in a truck of a subcarrier. When the sender gave instructions to reload the goods at a certain place so the goods could be transported from th*at* place by another carrier, the goods will be delivered at this place by the carrier and h*is* liability will end *there*. If the goods are damages during the unloading from the truck of the carrier art. 17.4.c CMR will apply (see higer under improper discharging). So only when the carrier was instructed to reload the goods and the carrier cannot be held liable for damages during the unload, the carrier will not be held liable.
Traffic	NO	Sometimes	In principle the carrier will be held liable for damages, losses or delay due to traffic (accident). The only way for the carrier the escpape liability is to proof that the traffic (accident) was a circumstance which the carrier could not avoid and the consequences of which he was unable to prevent (art. 17.2

			CMR). The carrier will have to proof that he has taken all reasonable precautions ass any other normally prudent carrier (the so called Bonus Pater Familias) would have and that it was impossible to prevent the damages, loss or delay. In case of sudden road accidents or road blocks the courts are reasonably benevolent in allowing the exemption of liability of art. 17.2 CMR, especially in case of traffic accidents. "When a traffic accident is entirely caused by a third road user de carrier can be exempted from liability for damages to goods on the basis of art. 17.2 CMR" (Commercial Court Brussels 31 March 1996, ETL 1996, 586) *"Sudden breaking by a vehicule in front of the carrier is in traffic not an un unforseeable obstacle. The carrier can prevent such an incident bu adjusting his speed and cannot thus not appeal to the ground for exemption of art. 17.2 CMR." (Commercial Court Brussels 9 January 1978, JPA 1977-1978, 278)* It the accident or other incident was on the other hand not completely unforseeable or unavoidable, the carrier will not be exempted. The proof of the unavoidable and unforseeable circumstance is incumbent upon the carrier.
Weather conditions	YES	Rarely	In principle the carrier will be held liable for damages, losses or delay due to weather conditions. The only way for the carrier the escpape liability is to proof that the weather condition was a circumstance which the carrier could not avoid and the consequences of which he was unable to prevent (art. 17.2 CMR). The carrier will have to proof that he has taken all reasonable precautions ass any other normally prudent carrier (the so called Bonus Pater Familias) would have and that it was impossible to prevent the damages, loss or delay. "A *heavy thunderstorm in August on a route Antwerp-Bazel is not an unforseeable circumstance of wihich the consequences could not have been prevented." 'Court of Appeal Brussel 25 May 1972, JPA 1972, 219)* "The allegations regarding urgent roadside assistance with another truck, bad weather conditions, poor road surface conditions, etc. are nowhere in the concrete and objective proof and do not even constitute force majeure for which the carrier could rely on the waiver of liability under Art. 17, 2 ° CMR." *(Court of Appeal Gent 19 December 2005, Eur.Vervoerr. 2007, afl. 2, 275)* The proof of the unavoidable and unforseeable circumstance is incumbent upon the carrier *and will be hard to deliver*.
Overloading	YES	Sometimes	L*iability for damages, losses or delay because of overloading will most likely not be a circumstance that was unforseeable and unavoidable for the carrier (art. 17.2 CMR).* *"The overloading of the truck that is a consequence of an order of the sender is not a circumstance in the sense of art. 17.2 CMR." (Commercial Court Brussels 3 October 1970, JPA 1970, 487)*

			Under art. 17.1 CMR the carrier will be liable. However, the sender is in principle responsible for the loading of the truck as we have seen higher (under improper loading). Therefore if the loading has been done by the sender and truck is overloaded the carrier will be able to claim the exemption of liability under art. 17.4.c CMR. "If a semi-trailer is overloaded by the sender and a *coupling* of the vehicle collapses during the execution of the transport, resulting in major damage to goods, the carrier may rely on the ground for exemption of Article 17 paragraph 4 letter c CMR for the discharge of his responsibility. since the damage in this case could have been caused by the defective load - existing in an overload - even when it is not 100% certain that the clamping coupling broke as a result of the overload." *(Commercial Court Liège 3 October 1969, JPA 1970, 278)* I*t is to be reminded that the carrier has a limited obligation to check the load for visible defects. So if the carrier would have noticed the overload and did execute the transport, there is some case law that holds the carrier liable because the carrier should have refused to start the transport.*
Contamination during / after loading	YES	Rarely	If with contamination during/after l*oading* the situation is meant where the transported goods a*re* contaminated *the liablity of the carrier falls under the scope of the CMR Convention.* *Under art. 17.3 CMR the carrier cannot escape liability by appealing to defects of the vehilce used for the transport. By consequence if there are remainders of previous charges in the truck that have contaminated the loaded goods, the carrier cannot escape his liability (art. 17.3 CMR).* *If the carrier wants to exempt his liability, he will have to proof that there were unforseeable circumstances with consequences that could not have been prevented (art. 17.2 CMR).* *If the carrier wants to pass on the liability to the party that has loaded the goods, he will have to proof that this party was aware of the fact that the truck was not properly cleaned. The entitled party in the sense of art. 17.2 CMR can only commit an onw fault if he was aware of the remainders in the truck.* *The party that has to load the truck has not the obligation and cannot be expected to investigate the truck used by the carrier for any risk of contamination. The carrier has to make sure the trucks he uses are suited for the ordered transport.* *"The term "defect of the vehicle" does not include the unsuitability of the vehicle. The suitability of the vehicle in the event of contamination of bulk goods by residues from previous loads, is related to the specific rights and obligation of the parties involved, in particular the obligations to clean, the instruction or lack thereof or the possible lack of verification, in short, all the tasks / obligations that the shipper / carrier / consignee perform or do not perform in the performance of the agreement. (Art. 17.3 CMR)" (Court of Appeal Antwerp 19 February 2007, Eur.Vervoerr. 2007, afl. 3, 427)*

Contamination during / after discharge	YES	Rarely	I*f with contamination during/after the discharge the situation is meant where the transported goods have contaminated and thus caused damage to other than the transported goods, the question of liability does not fall under the scope of the CMR-Treaty. Belgian case law has come to the conclusion, after years of varying case law, that the CMR Convention only regulates liability for the transported goods. If there would be damage to other than the transported goods, as would be the case after the transported goods have contaminated other goods, this liability has to be assessed on the basis of the applicable national law.* *"It follows from Articles 17, 23 and 25 of the CMR Convention that the CMR Convention only regulates the liability of the carrier for the loss or damage of the transported goods and for the delay in their delivery. The CMR Convention does not regulate the liability of the carrier for other damage and in particular not for the damage caused to goods other than the goods transported, which is governed by the applicable national law." (Court of Cassation 23 January 2014, Arr.Cass. 2014, afl. 1, 209)* *In this cited judgement of the Court of Cassation the underlying facts were a contamination of stored sugar after the discharge of transported sugar in the silo where the sugar was stored. The sugar that was already stored in the silo did not constitute as transported goods. Therefore the CMR Convention did not apply and the carrier was held liable for a breach of contract (under national Belgian contract law) because the client asked to execute the transports with cleaned trucks, which was not the case.* *It thus very important to check what the contractual agreement is between the parties concerning the transport orders. Is there an explicit clause concering the used trucks? Is there an explicit exemption for the carrier for damages to other than the transported goods? Etc. A last question is whether or not the lastest case law of the Court of Cassation will stand? But for the time being the carrier will, depending on the contractual relationship between all parties, most likely be liable for contamination after the discharge.*

13. Successive carriage (art. 34 – 40)

13.1. When is a successive carrier liable? (art. 34 – 36)

According to article 34 CMR Convention, which is applicable in Belgium to all international and national transport agreements for the transport of goods by road, stipulates that if a carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming party to the contract of carriage, under the terms of the consignment note, by reason of acceptance of the goods and the consignment note.

For the successive carrier to be jointly and severally liable towards the cargo stakeholders, it is important that both the consignment note and the goods are received by the successive carrier. The consignment note which is handed over must cover the entire road transport. The successive carrier then agrees to enter into the original transport agreement.

If only the goods are received by the carrier, and a new consignment note is handed out for the part of the transport that this second carrier will perform, there is no successive carriage in the meaning of article 34 CMR Convention. In this case the second carrier will not be jointly and severally liable under the original transport agreement.

If several successive carriers are involved in the international transport of goods by road, the consignee is allowed to hold liable all (successive) carriers which are jointly and severally liable for the payment of the damages.

13.2. To what extent do successive carriers have a right of recourse against one another? (art. 37 – 40)

The carrier who performed the part of the carriage during which the event of damage occurred must bear the damage himself, regardless of whether he paid for the damage himself or whether it was compensated by another carrier. The successive carrier has therefore a right of recours against the carrier who performed the part of the carriage during which the event of damage occurred.

The carrier who performed the part of the carriage drung which the damage occured should therefore be ordered to pay the damage to the carrier who was ordered to pay the damage as the "last" carrier against the owner of the goods, now that it has been established that the damage occurred during the part that he performed.

A claim, before the Belgian courts, against one of the successive carriers of who it is established that the damage did not occur while he was in charge of the goods, is not founded.

If it is not clear which of the successive carriers is responsible for the damage occurring during the carriage and where the place and time thereof cannot be determined, each successive carrier must contribute pro rata in the compensation for the damage.

13.3. Nice to know: What is the difference between a successive carrier and a substitute carrier? (art. 34 & 35)

The Belgian Commercial Court of Antwerp explicitly stated that the substituted carriers are not to be considered as successive carriers in the meaning of article 34 CMR Convention. This means that the consignee, for his rights of recourse against the substituted carriers, cannot apply the CMR provisions which are applicable to the successive carriers. The consignee must therefore rely on the national legislation which is applicable to the relevant transport contract. Commercial Court Antwerp, 17 February 1974, E.T.L., 1974, IX, 504.

The main difference between the successive carrier and the substituted carrier is the fact that the substituted carrier does not make clear the intention to enter (as a party) into the original transport agreement which the principal carrier concluded.

14. E-CMR

14.1. Can the CMR consignment note be made up digitally?

Yes/No	E-Protocol	National law (civil law as well as public law)	Landmark cases	Clarification
YES	The E-Protocol regarding the E-CMR has been signed by Belgium. However, the E-protocol was not yet ratified. According to the (then competent) federal minister of mobility François Bellot, there are currently too many unresolved questions regarding the compatibility of the used systems in the different countries, the systems to fight against fraud an data recognition. Therefore, Belgium has launched a	The regulation of the pilot project regarding he e-CMR consignment note within the Benelux is established in the Royal Decree of 10 April 2016 regarding the electronic consignment note.	No Belgian case law regarding the E-CMR consignment note, nor the pilot project on the E-CMR consignment note was found.	The use of the e-CMR consignment note within the Benelux pilot project has the same value as the paper version of the consignment note as long as the e-CMR consignment note meets certain conditions. The E-CMR consignment note (i) must comply with the provisions of the E-CMR protocol, (ii) must be created by a supplier who is authorized to issue an e-CMR consignment note and does so with the required technology and (iii) must be used by a registered user of the e-CMR consignment note.

	three-year pilot project (ending 28 February 2021) for the use of e-CMR consignment notes for intra-Benelux road transport. This pilot project is limited to intra-Benelux freight transport and national cabotage. The pilot project in the Benelux is based on the provisions of the e-protocol to the CMR Convention.			

14.2. In addition to question 14.1: If your country has ratified the e-CMR protocol is there any national case law, doctrine or jurisprudence that practitioners should be aware of?

The e-CMR protocol has not yet been ratified in Belgium.