The information in this country report was provided by

Mads Poulsen, lawyer and partner

Aage Krogh, lawyer and partner

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	This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties. (Art. 1 Part. 1 of the Convention).	The Danish CMR-act implements the CMR. The Danish CMR-act is applicable to carriage of goods by road even if no consignment note is issued. This follows from section 1 subsection 1 and section 5 subsection 2 of the Danish CMR-act which corresponds to section 1 and 4 of the CMR. It follows from section 5 subsection 2 that the absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract which remains subject to the Danish CMR-act.	UfR 1968.130 VL: Carrier was responsible for the loss of 400 pipes regardless of the absence of consignment note.	If no consignment note is issued the claimant has the burden of proof that the CMR-act applies and that there is a contractual relationship between the parties.

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

Yes/No	Convention	National law	Landmark cases	Clarification

YES	This Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties. (Art. 1 Part. 1 of the Convention).	The Danish CMR-act governs transport of goods by road in vehicles between different states, when the carriage is performed in exchange for reward and the place of either taking over the goods or the place of delivery according to the contract is situated in Denmark or between foreign states when at least one of them is a party to the CMR (section 1 subsection 1 of the Danish CMR-act)	The Danish Maritime and Commercial High Court has in its expressed ruling of 16th of June 1993 case H 70/1990 stated that a term in a consignment note that expresses that the CMR applies is binding on the parties of the contract if the consignment note is signed without objections, even though the transport is domestic.	If the carrier without stating it in the consignment note expressly, before or simultaneously with the conclusion of the contract, makes it clear to the shipper that the domestic transport is performed in accordance with the CMR-act, and the shipper do not objected to this, the shipper is presumed to have agreed to the application of the CMR-act.

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

Yes/No	Convention	National law	Landmark cases	Clarification
NO	N/A	N/A	N/A	N/A

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**	The Danish CMR-act CMR does not apply to the framework contract u*nless this is agreed*. However, at the time of the c*onclusion* of the	N/A	N/A

		individual contracts each carriage will be subject to the Danish CMR-Act.		
☐	**Physical distribution**	N/*A*	N/*A*	N/*A*
☐	**Charters**	N/*A*	N/*A*	N/*A*
☐	**Towage**	N/*A*	N/*A*	N/*A*
☐	**Roll on/roll off**	According to the Danish CMR-code section 3 subsection 1 the Danish CMR-code applies in the contractual relationship between the carrier and the sender in roll-on/roll-off transportations. The contractual relationship between the sender and the road carrier's sub-carriers will not necessarily be determined by CMR. That depends which kind of transportation the sub-carriage is regulated by. The ambit of section 3 is limited to contracts of transportation covering the entire transport. The important exception being section 3 subsection 2 which provides that when the damage, loss or delay occurs during a different mode of carriage than road and the reason for this cannot be attributed to the carrier, but events which could only occur during and because of the other	SH 1984.577 SH. In this case there was no CMR consignment note for ro-ro transport, and the plaintiff could therefore not lift the burden of proof that the CMR act applied. Instead the rules governing ocean carriage applied since the document of transport was a Through Bill of Lading. The Court emphasized that the plaintiff did not object when he was issued a bill of lading. This entails that carriages in principle covered by the ambit of section 3 can be regulated by other sets of rules than the CMR. However, it should be noted that the ruling is criticized among some legal scholars with reference to the mandatory nature of the CMR-act.	N/*A*

		mode of transportation. In these situations, the liability for the road-carrier should be assessed in accordance with the rules which applies to the mode of transportation to the extent that these are preceptive. If no such preceptive rules exist, the liability of the road-carrier is assessed in accordance with the CMR-code. This is in accordance with the CMR-convention's article 2.		
☐	**Multimodal transport**	The extent to which the CMR applies to multimodal transport must be assessed in the light of the parties' contract. If a multimodal document of transport is issued it is the provisions in its document that will govern the contractual relationship between the parties. The exception to this is that the parties cannot circumvent the application of CMR to the detriment of the carrier, shipper or third party by such contract.	N/*A*	N/*A*
☐	**Substitute carriage**[1]	According to the Danish CMR-act section 45 legal proceedings in respect of liability for damage, loss or delay may only be brought against the first carrier, the last carrier or the carrier who was performing that	N/*A*	N/*A*

[1] partly art. 3

		portion of carriage during which the event causing the damage loss or delay occurred.		
☐	**Successive carriage**[2]	The Danish CMR-act section 43 determines that every carrier in a successive carriage is liable for the entire transport under the Danish CMR-act when the conditions in section 43 are met: The conditions are as follows: 1) When the carriage of goods is by road. 2) The transport is performed by successive carriers after each other. Importantly it follows from this criterion that section 43 does not apply to fully forwarded contracts where the transport is not actually carried out by more than one carrier though there is some discussion about this among judicial scholars. 3) The successive carriage must be performed based on one contract where the successive carriers receive both the goods and the consignment note. The Danish CMR-act section 43 only applies when the contractual	In U 2009.1616 S the Maritime and Commercial High Court did not expand the ambit of the Danish CMR-code section 43 to fully forwarded contracts. The Danish Supreme Court has yet to conclude if fully forwarded contracts are in the ambit of section 43.	N/A

[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

		carrier contracts a part of the transport to a sub-carrier on his own behalf and own expense. Section 43 does not apply when the sub-carrier is engaged on behalf of the shipper or on the expense of the shipper. If the subcarrier is engaged either on behalf of the shipper or at his expense, then the entire transport is not performed based on one contract.		
☐	**'Paper carriers'** [3]	According to The Danish CMR-Act section 4 which corresponds to the Convention section 3 the carrier is responsible for acts and omissions of his agents or other persons of whose services he makes use for the performance of the carriage as if such acts and omission were his own. There is a distinction between a "carrier" a "forwarder" since the CMR-Act only applies to the carrier. However, in most cases concerning road carriage a forwarder will be deemed a carrier.	N/A	N/A

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

No

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

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	NO	The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject the provisions of this Convention (Art. 4 of the CMR Convention).	The contract of carriage must be confirmed by a consignment note, cf. Danish CMR-act section 5. This entails a duty for the parties of the contract to participate in the making of a consignment note. However, the provision does not determine who is obliged to issue the consignment note. The contract is still valid if no consignment note is issued.	N/*A*	N/*A*
2.2	YES	The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not	According to the Danish CMR-Act the shipper is liable for false or incomplete information given to the carrier in the consignment note, cf. section 9	N/*A*	N/*A*

		affect the existence or the validity of the contract of carriage which shall remain subject the provisions of this Convention (Art. 4 of the CMR Convention).	of the Act. The shipper is liable for any loss or damage the carrier will have suffered because of the false or incomplete information. Section 9 will probably also apply to information absent in the consignment note. Further, the shipper is liable for false or incomplete information expressly provided to the carrier even if it the false or incomplete information is absent from the consignment note.		
2.3	YES	On taking over the goods, the carrier shall check: (a) The accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and (b) The apparent condition of the goods and their packaging (Art. 8 Part. 1 of the CMR Convention)	According to section 10 of the Danish CMR-act the carrier must examine if the quality, quantity and the packaging of the goods corresponds with the information in the consignment note when he receives the goods. This obligation in section 10 merely functions as evidence and the legal effect of the carrier's failure to examine the goods is an assumption that the goods were received by the carrier in the condition described in the consignment note, cf. section 11 subsection 2.	U.2012.2415 S: The Maritime and Commercial Court found that the carrier was not liable for the lack of examination regarding whether the actual temperature of carriage corresponded with that of the consignment note. However, the carrier was liable for the damage to *the* goods occuring because the goods were not c*arried* in accordance with the consignment note.	N*/A*

2.4	YES	Where the carrier has no reasonable means of checking the accuracy of t*h*e statements referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging, such	If the carrier does not express any reservations in the consignment note, there is an assumption that the goods were received in good order and condition, cf. The Danish CMR-act section 11 subsection 2. The carrier can prove that the consignment note did not describe the goods accurately, but the burden of proof is very hard to lift. If the carrier does express reservations the consignment note will not serve as evidence as section 11 subsection 2 prescribes, and the shipper then has the burden of proof that he did not accept the reservation. Since the consignment note will no longer have this effect the burden of proof that the damage to the goods happened while being in possession of the carrier is on the shipper.	U.1979.191 V: At the delivery in Sweden of an amount of an alleged amount of 800 cll. frozen shrimp 35 cll. were missing. The carrier did not examine if the amount in the consignment note corresponded with the actual amount of shrimp but issued the consignment note in accordance with the shipper's instructions. The cargo was sealed, and the carrier did not leave the cargo out of sight. When the consignee received the goods, he acknowledged that the cargo was sealed. The carrier was liable for the missing shrimp since he did not make any reservations in the consignment note.	N*/A*

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	The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods. (Art. 11 Part. 3 of the CMR Convention).	According to the Danish CMR-act section 14, subsection 1 it is the Shipper's obligation to provide all necessary documents regarding customs and other formalities. The shipper is liable to the carrier for any missing or incomplete documents. The liability is strict and without limitations. The carrier does not have an obligation to review whether the documents are incomplete or incorrect, cf. section 14 subsection 2. The division of the responsibility can therefore be described as following. The carrier is responsible for providing the necessary documents so that the carrier can execute the custom formalities which he is entrusted.	N/A	N/A

3.2	YES	N/*A*	The carrier does not have an obligation to review whether the documents are incomplete or incorrect, cf. section 14 subsection 2. However, if the carrier knows that documents are missing or incorrect when he receives the cargo, he can be liable for damages or loss. The carrier is liable for the loss or incorrect use of the documents specified in the consignment note or deposited with the carrier, unless he can document that the loss or incorrect use is not due to the negligence of himself or someone he is responsible for , cf. section 14 subsection 3. The carrier is not liable for damages which would exceed the compensation in the event of loss of the cargo.	N/*A*	N/*A*
3.3	YES	N/*A*	N/*A*	N/*A*	*cf. question 3.1*
3.4	YES	N/*A*	N/*A*	N/*A*	C*f. question 3.1*

4. The right of disposal (art. 12)

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

The consignor has the right of disposal from the time of the conclusion of the carriage agreement, cf. The Danish CMR act section 15. When the second copy of the consignment note accompanying the goods is delivered to the consignee, or when the consignee has required the delivery of the consignment note and the goods, the right of disposal transfers to the consignee. However, the consignee has the right of disposal from the time the consignment note is drawn up if the consignor makes an entry to that effect in the consignment note.

The extent to which the consignor and consignee can instruct the carrier subsequently is limited to instructions regarding the carriage, the delivery of the goods or actions which are connected to customs or collection of trade charge.

Subsequent changes to the carriage agreement regarding other aspects can only be adopted by the parties in agreement.

The right of the consignor to dispose of the goods includes but is not limited to 1) asking the carrier to stop the goods in transit, 2) to change the place at which delivery is to take place 3) or to deliver the goods to a consignee other than the one indicated in the consignment note, cf. section 15 subsection 1.

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)?

According to the Danish CMR-act section 17 the carrier is liable to the entitled for damage caused by the carrier's failure to comply with the instructions of the shipper or consignee.

The carrier is liable to the entitled for damage caused by the carrier following the instructions of the shipper or consignee if the carrier does not require the first copy of the consignment note to be produced as proof of the instruction.

However, a consignment note is not a necessity for the shipper's or the consignee's right of disposal. If a consignment note is not issued the carrier will need to obtain other documentation for the subsequent instructions and will be under a duty to perform the carriage accordingly.

The carrier is not obliged to carry out the instruction if this would be impossible at the time the instruction reached the carrier or it interferes with the normal working of the carrier's undertaking or prejudices the shipper's or consignee's other consignments, cf. the Danish CMR-act section 16 subsection 2.

The carrier can even be liable for not using the right of refusal in the Danish CMR-act section 16 subsection 2 if the compliance with the instructions causes damage to the goods.

In FED 2005.320 V the High Court found that the carrier was liable for the damage to goods caused by the instructions of the shipper. The carrier should have informed the instruction could not have been performed without causing damage to the goods. However, the carrier did not refuse the instruction and could therefore not be relieved of liability for the damages.

If the carrier refuses to carry out the instructions from the shipper or consignee he must notify the shipper or consignee of the basis in section 16 subsection 2 he supports his refusal. If the carrier fails to give notification, he might be liable for any damage caused by not following the instructions. This is the case even if the carrier was entitled to refuse to carry out the instructions since the shipper is thereby unable to give new instructions to the carrier whereby a loss or damage can be avoided.

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	If for any reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for delivery, the carrier shall ask for instructions from the person entitled to dispose of the goods in accordance with the provisions of article 12. (Art. 14 Part. 1 of the CMR Convention).	If it becomes impossible to carry out the contract in accordance with the consignment note before or after the goods reach the place designated for delivery the carrier m*ust* ask for instructions from the person entitled to dispose of the goods, cf. the Danish CMR-act section 19 subsection 1. If the carrier fails to obtain instructions or if he follows instruction from a party not entitled to dispose of the goods,	N/*A*	N/*A*

			he is liable for the damages caused.		
5.2	YES	Where circumstances prevent delivery of the goods after their arrival at the place designated for delivery, the carrier shall ask the sender for his instructions. If the consignee refuses the goods the sender shall be entitled to dispose of them without being obliged to produce the first copy of the consignment note (Art. 15 Part 1 of the CMR Convention).	If the carrier follows instructions from the shipper without requiring the first copy of the consignment note to be produced he is liable to the consignee to *whom* the right of disposal is transferred.	N/*A*	N/*A*

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*	N/*A*	N/*A*	T*here is no court practice in this respect but it is thought that packaging is not be considered part of the goods.*

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

According to the Danish CMR-act section 12 the shipper is liable for damage to persons, equipment or other goods and for any expenses, when the damages or expenses due to faulty packaging. The liability is not restricted to damages to the carrier but also indemnification for the carrier's liability to others. The liability includes hidden flaws in the packaging.

"Person" applies to everyone who suffered damage due to faulty packaging. "Equipment" applies to the carrier's equipment and "other goods" applies to the goods of third parties.

The liability of the shipper is objective, and no limitation of liability applies.

The shipper is not liable if the carrier by contract is responsible for the packaging. Furthermore, the shipper is not liable if the faulty packaging was visible or known by the carrier and he has failed to make any reservations regarding this.

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

The Danish CMR-act section 38 distinguishes between situations where the consignee has examined the goods with the carrier and situations when this has not happened. Further it distinguishes between visible loss or damage and not apparent loss or damage.

If the carrier and consignee have not examined the goods together the position is as follows:

Visible loss and damage:

The notification of damage must be given no later than the time of delivery. Importantly this time is not necessarily the same as the time of receipt. It is not a requirement that the notification is in writing. This was established in the Danish Maritime and Commercial High Court's ruling U 1973.243 S.

The notification must contain a qualified description of the loss or damage. The notification must be sufficiently precise for the carrier to know the issue of the notification.

As regards loss and damage which is not apparent the position is as follows:

If the loss or damage is "not apparent" the notification must be given in writing within 7 days from the time of delivery.

The notification must contain a qualified description of the loss or damage.

Regardless of the loss or damage being visible or not the notification must be given to the carrier and not the shipper.

If the carrier and consignee have examined the goods together the position is as follows:

Visible loss and damage

If the carrier and consignee has examined the goods together the consignee cannot claim visible damages or loss not discovered at the inspection.

Not apparent loss or damage

The consignee must notify the carrier within 7 days from the delivery. The notification must be in writing.

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

The goods are visible in accordance with the Danish CMR-act when external circumstances indicate that the goods are damaged. An example of this could be damaged packaging.

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

If the consignee does not notify or does not notify within the time limitation the consequence is that the consignee is presumed to have received the goods in a condition that corresponds with the consignment note. In this instance it is the consignee's burden of proof that the goods were not received as described in the consignment note. The burden of proof is as heavy as that of carrier if there is no reservation in the consignment note before the delivery of goods.

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)

According to the Danish CMR-act section 39 the courts of Denmark are competent to hear the case when:

1: the defendant has his place of residence or his principal place of business in Denmark, or the branch or agency through which contract or carriage was made is in Denmark

2: the place of taking the goods or the place of delivery is Denmark. This is the actual place of taking the goods and the agreed place of delivery.

3: The parties' contract confer competence to the Danish courts.

If a claim is pending at a court competent under section 39 no new action regarding the same claim between the same parties must be commenced, unless the judgment of the first claim is not enforceable in the country in which the proceedings where brought, cf. Danish CMR-Act section 40.

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	N*/A*	*N/A*	In 2008.1638 H the Danish Supreme Court stated that in the relationship between the contractual carrier and the performing carrier the Air Carriage-Act was not adopted which was the case f*or* the other legs of the carriage. Instead the parties had agreed on an international road carriage. The Supreme Court found that the contractual carrier was liable in accordance with the Danish Air Carriage-Act but the limitation p*eriod for* his claim against the performing carrier was governed by the Danish CMR-Act.	N*/A*

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	N*o*	The parties cannot by agreement award a court with exclusive competence when another court according to section 39 of the Danish CMR-Act is competent. The	N*/A*	T*his follows from the wording of the English wording of the CMR*

		parties can any time bring a dispute before any court competent in accordance with section 39 of the Danish CMR-Act.		

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)

The Danish CMR-act section 4 corresponds to the CMR article 3 and lists the group of the people whose actions the carrier is responsible for.

The group of people within the ambit of section 4 is:

1: persons employed by the carrier. This could be drivers or warehouse staff. Employment does not have to entail a permanent contractual employment but can entail assisting the carrier on a regular basis with the contract of carriage.

2: persons whose service the carrier makes use of for the performance of the carriage. This could be subcontracting carriers and the subcontracting carrier's staff and can also include external staff hired by the carrier to assist with carriage.

Outside the scope of section 4 are persons who are required by law to occupy themselves with the carriage. E.g. custom staff and veterinarians.

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

It is a condition for the liability of the carrier that the acts and omissions are part of the performance of the carriage. Whether the acts or omissions are part of the performance of the carriage must be determined by an overall assessment including all the circumstances of the carriage. There must be a connection between the purpose of the task performed by the person for whom the contractual carrier is liable for and the act or omission giving rise to the claim.

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

According to the Danish CMR-act section 24 the carrier is liable for loss, damage or delay occurring from the time of receipt until the time of delivery.

The carrier's liability does not begin before a contract of carriage is concluded. Thus, if the carrier is in possession of the goods but no contract of carriage is concluded he is not liable according to section 24.

Delivery takes place when the carrier's possession of the goods has ended with the consent of the consignee in a way so that the goods are at the consignee's actual disposal.

The carrier can be relieved of liability if he proves that the damage, loss or delay was caused by the wrongful act or neglect of the claimant, by the instruction of the claimant given otherwise than as the result of the wrongful act or neglect on the part of the carrier, the inherent condition of the goods or through circumstances which the carrier could not avoid and with consequences the carrier could not prevent, cf. section 24 subsection 2 of the Act.

It is the carrier's burden of proof, that the exceptions from liability mentioned above apply. The carrier will have to show that the reason for the damage, loss or delay is within the ambit of subsection 2.

In FED 2016.16 S the Maritime and Commercial High Court stated that a delivery of berries was in the possession of the consignee at the time when the carrier had parked at the consignee's warehouse, even though the consignee was not present at the time. Thus, the carrier was no longer liable when the berries suffered damages as a result of high temperatures that occurred while the carrier was parked at the consignee's warehouse.

However, in FED 2019.38. The Commercial and Maritime High Court found that a consignment of frozen goods from a trailer were not in the possession of the consignee when the trailer was parked outside the consignee's warehouse at a parking space which was public accessible and not monitored. The consignee was not present at the time.

The Court emphasized that the goods had to be checked in and delivered to the consignee who should issue a receipt before delivery had happened. Thus, the carrier was liable for the loss of the goods.

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	YES	The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.	The answer to this question might depend on who the dispute is between. A dispute between a third party whose goods have become damaged by the shipper's goods and the shipper is not covered by the CMR. If a third party takes direct action against the shipper, it will be based on general rules of t*ort*. If the third party wants compensation according to the Danish CMR-act the third party will in this instance have to claim compensation from the carrier who can th*en* claim compensation from the shipper according to section 12 of the Danish CMR-act.	N*/A*	C*f. question 8.3 and 6.2.*
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	If the container or trailer is permanently secured to the vehicle it must be considered as part of the vehicle, and the carrier is liable for the damage caused by the defect trailer or container, cf. section 24	N*/A*	N*/A*

		whom he may have hired the vehicle or of the agents or servants of the latter.	subsection 3 of the Danish CMR-act. If the container or trailer on the other hand is loaded onto the vehicle it will be a matter of who provided the container or trailer. If provided by the carrier it will be considered a part of the vehicle and if provided by the shipper, it will be considered part of the packaging.		
8.6	YES	N*/A*	N*/A*	In 1982.402 H the Danish Supreme Court found that the company ordering a carriage A could not be considered the shipper since a German forwarder P was stated as the shipper on the consignment note and the forwarder had signed the consignment note. The actual transport was performed by the performing carrier N. When the goods of a dangerous nature caused acid to spread and damage other goods A was not liable since he could not be considered to have entered into an agreement with N on his own behalf. Thus, A was not liable for the damages which N suffered.	N*/A*

				In the Danish Supreme Court's u*nreported* ruling of 4 December 1981 case H 1/1981 a carrier c*arried* meat to several different consignees. O*n the* arrival at one of the consignees it was discovered that the meat shipped for the consignee was missing and was accidentally delivered to one of the other consignees. The meat could not be retrieved and was thus considered lost. The Supreme Court found that the carrier was liable and should cover the loss of the consignee.	

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)

The provision in section 24 subsection 2 regarding circumstances that the carrier could not avoid and consequences that he could not prevent has been invoked in the following type of cases in practice.

Traffic accidents

Fire

Theft

Fraud

Robbery

In general, the carrier's burden of proof is heavy to lift, and he can only be exempted from liability under extraordinary circumstances.

Traffic accidents:

In exceptional circumstances the carrier will be excempt of liability if the damage loss or delay is caused by traffic accidents. The carrier must prove that the accident was caused by extraordinary and unforeseeable circumstances, and that the accident could not have been avoided even with the greatest amount of caution.

Fire:

Cases of fire can only exempt the carrier of liability if the fire is caused by external circumstances. Fire resulting from the condition of the tires and vehicle or poor equipment cannot excuse the carrier. If the carrier is unable to prove the cause of the fire, he will be liable.

Theft:

For the carrier to avoid liability the carrier must prove that the theft could not have been avoided. This is an almost impossible burden to lift for the carrier. He will have to prove that he took active precautions to avoid theft. The carrier cannot defend liability by referring to driving times, breaks and rest periods prescribed by law. He will have to plan his carriage in a way which makes safe parking possible or stay in the vehicle during parking. The carrier is liable if the theft happens whilst the driver is asleep in the vehicle.

Fraud:

This entails a person presenting himself as entitled to the goods by showing false documentation when he is actually a third party. As with theft the liability of the carrier will depend whether he could have avoided the fraud and prevented its consequences.

Robbery:

Actual robbery exempts the carrier from liability. However, since most robberies happen in Italy, Russia, Sweden and most Eastern Europe the requirement to the carrier's caution may be stricter regarding these carriages. There are numerous cases concerning this.

In 1995.302 S, a contractual carrier was liable for the robbery of a consignment of lobsters during an overnight stay at a parking space in Monopoli, Italy. The contractual carrier and the performing carrier had positive knowledge that a lot of robberies of parked trucks happened in Italy. The Maritime and Commercial High Court found that it was an error by the contractual carrier that he had not instructed the performing carrier only to park in a guarded

parking space and in addition that he had not instructed the performing carrier sufficiently about guarded parking spaces in the area. Thus, the contractual carrier could not be exempted from liability under section 24 subsection 2.

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

According to the Danish CMR-Act section 25 subsection 1 the carrier is relieved from liability if the damage or loss is caused by the risks inherent in the provision which correspond with the risks described in CMR article 17 part 4.

According to section 25 subsection 2 the burden of proof the carrier must lift is that the damage or loss can have occurred because of the circumstances described in section 1. The burden of proof then shifts to the party entitled who must lift the burden of proof that the damage or loss was not caused due to the circumstances described in subsection 1.

The carrier can only be exempted for liability for loss or damage but not delay under section 25 of the Act.

If one of the exemptions from liability applies the carrier will not necessarily be completely free of liability. Even if one of these risks apply a division of liability might be relevant.

In the High Court of Appeal Eastern Division's ruling B-2009-15 of the 30th November 2006 the court found that the carrier was liable for damage caused due to his failure to measure the height of the goods. However, the shipper was partly at fault since he did not inform the carrier of the accurate height of the goods. The shipper was thus, 1/3 and the carrier 2/3 liable for the damage.

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	N/A	N/A	In the judgment *U* 2001.652 S, A bought a consignment of beef from a shipper in Norway B. A	N/A

				sold the goods to a Macedonian consignee. D*uring* the carriage from Norway to Macedonia the goods went bad because of the truck's involvement in a traffic accident. The goods were a total loss. A made a replacement delivery to the Macedonian consignee. A was compensated by his cargo insurance with an amount equal to the amount he would have received from the consignee in Macedonia upon selling the goods with the addition of the costs of the survey-report. The cargo insurance subrogated into A's claim against the carrier, who was only willing to pay the amount of the sale price from B to A. The carrier argued that paying the price the cargo insurance asked would result in A profiting from the same goods twice. The Maritime and Commercial High Court stated that the calculation of damages or loss is independent o*f* considerations of profit and loss.	

				The price paid by *the Macedonian consignee* for the goods on the time and place at which they were accepted for carriage was *therefore* the market price.	
10.2	YES	N/A	N/A	N/A	N/A

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)

According to the Danish CMR-act section 37, the limitations of liability do no not apply if the carrier has caused the damage by his misconduct or by such default on his part as is considered equivalent to misconduct (gross negligence). The difference between misconduct and gross negligence is discussed among legal scholars. In the following gross negligence will be defined as what the CMR describes as "such default on his part as, … is considered equivalent to misconduct.

The exemption from the limitations of liability applies regardless of the distinction between damage, loss or delay used in other parts of the Danish CMR-act.

The party claiming the exemption in section 37 has the burden of proof that limitations from liability do not apply. However, it is not a heavy burden of proof to lift, since the carrier is in the best possession to prove what really happened during the carriage. If the claimant succeeds the burden of proof shifts to the carrier who must now prove that he did not cause the damage by misconduct or gross negligence.

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?

Based on Danish case law misconduct or gross negligence has both an objective and a subjective element. There must be a considerable risk that the damage might occur and the carrier will need to have preconditions for assessing the risk and prevent this risk. An important element in the assessment of gross negligence is also the contract of the parties, particularly if precautions agreed on have been set aside by the carrier.

Theft

In U 2012.115 H The Danish Supreme Court found that a carrier had not acted with gross negligence when expensive wine was stolen from his vehicle's unlocked trailer, while he was parked at a rest area. The reason was that the carrier did not know about the value of the wine or that the wine should be handled in a specific way. Further, it was not grossly negligent that the carrier did not obtain this information.

The Danish Supreme Court came to a similar result in U 2013.1521H. The case concerned a carriage of Ipods which were lost while the carrier was parked at a resting place. The Danish Supreme Court did not find that the carrier had acted with gross negligence since the shipper did not instruct the carrier that the he should have taken precautions due to the theft attractive nature and value of the goods. There was no evidence that the carrier had knowledge about the nature and value of the goods or that the choice of resting place was different or riskier than what is common for carriage of ordinary goods.

Damage

In FED 2009.32 S the carrier noticed after 100 kilometers of carriage that the machines which he was carrying were damaged due to insufficient securing of the goods. The carrier did make a reservation regarding the securing of the goods in the consignment note, but since the shipper did not sign the consignment note the reservation did not apply. The Danish Maritime and Commercial High Court found that the carrier had acted grossly negligent, when he commenced the carriage even though he knew that the goods were insufficiently secured.

Parking

The choice of parking can be crucial in the assessment of misconduct or gross negligence.

U 1991.826 H. The Danish Maritime and Commercial High Court found that the carrier had been grossly negligent. The reasoning was that the carrier had parked the goods in a public accessible industrial area. The goods were only protected by a tarpaulin. Thus, the thieves had easy access to the goods and could steal them by simple means. The Maritime and Commercial High Court did not find that the choice of parking was justified by necessity in performing the carriage. The Danish Supreme Court upheld the ruling.

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	YES	Never	*There is not much case law on this liability situation. However, the same consideration described above regarding robbery situations are likely to apply to theft while driving as well.*
Theft during parking	YES	Rarely	*There is little doubt that the carrier is usually liable for theft during parking, cf. question 9.1.* *The judgment FED 2016.55 S of the Danish Maritime and Commercial High Court is a good example of how difficult it is for the carrier to avoid liability for theft during parking:* *The carrier won a contract to perform carriage for a shipper because the carrier was the cheapest among the carriers competing for it. This was primarily because the carrier performed carriages with tarpaulin trailers. During a carriage to Sweden the tarpaulin was cut open by thieves while the vehicle was parked. The carrier was liable for the theft since the carrier due ot the use of tarpaulin trailers. Further, the carrier did not advise the shipper against using a tarpaulin. The carrier was thus liable.* *The discussion among legal scholars and the ambiguity of the case law primarily concerns whether or not the carrier has acted with gross negligience.* The choice of parking can be crucial in the assessment of misconduct or gross negligence. U 1991.826 H. The Danish Maritime and Commercial High Court found that the carrier had been grossly negligent. The reasoning was that the carrier had parked the goods in a public accessible industrial area. The goods were only protected by a tarpaulin. Thus, the thieves had easy access to the goods and could steal them by simple means. The Maritime and Commercial High Court did not find that the choice of parking was justified by necessity in performing the carriage. The Danish Supreme Court upheld the ruling.

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

			In U 2012.115 The Danish Supreme Court found that a carrier had not acted with gross negligence when some expensive wine was stolen from his vehicle's unlocked trailer while he was parked at a rest area. The reason was that the carrier did not know about the value of the wine or that the wine should be handled in a specific way. Further, it was not grossly negligent that the carrier did not obtain this information. *There is a tendency to excuse the carrier from gross negligience if the shipper has not advised the carrier sufficiently about the nature of the goods.*
Theft during subcarriage (for example an unreliable subcarrier)	YES	Rarely	The carrier will be liable if there is a connection between the l*oss* and the performance the subcarrier is hired to do. The answer to this depends on an individual assessment. If the goods are e*n*trusted t*o* the sub carrier the carrier will be liable for the subcarrier's theft in accordance with section 4 of the Danish CMR-Act. Differently if the goods are stolen by someone not entrusted with the goods, cf. question 8 above. Clarification: Case law is not ambiguous; however, it is a bit vague r*egarding the connection between the misconduct and the performance the subcarrier is hired to do* which makes it difficult to assess the certainty and s*cope* of the case law.
Improper securing/lashing of the goods	YES	Sometimes	Some ambiguity in the case law. According to section 24 of the Danish CMR-Act the carrier is liable for damage to the goods. One of the exceptions being that the carrier can relieve himself o*f* liability if the shipper is responsible for the loading, discharge or securing of the goods. However, there i*s* a general duty for the carrier to ch*eck* the proper securing of the goods. The extent of the applic*ation* of this duty is subject to individual assessment based on consideration of professional experience and expert knowledge. In the Commercial and Maritime High Court's ruling of 16th of February 1978 case H 38/1977 the Court stated that the carrier was not liable for the improper securing of the goods. The reasoning of the Court was that the shipper who conducted the securing had expert knowledge and that the carrier based on the specific circumstances did not fail his obligation of to examine the securing of the goods.

			However, in U 1979.335 the Danish Supreme Court found that the carrier was liable for the damage to steel pipes carried from Germany to Denmark. The reasoning of the Court was that it was apparent that the pipes were not sufficiently secured and this could also cause a danger in traffic. The carrier was thus liable even though the shipper conducted the loading and securing.
Improper loading or discharge of the goods	YES		The period of the carrier's liability ends after the goods are at the actual disposal of the consignee. Damage during discharge performed by the carrier is therefore damage within the carrier's period of liability and he is liable according to the Danish CMR-Act section 24. Securing is considered part of the loading *under Danish law*. There is not much case law regarding damage of goods during discharge. Whether the carrier is *relieved of* liability because of the consignee's duty to discharge the goods or the shipper's duty to load the goods depends on who conducted the loading or discharge and who was responsible according to the contract of the parties. As described above the period of the carrier's liability expires when the goods are at the actual disposal of the consignee. Therefore, the carrier is not liable if the consignee commences the discharge. A similarity with liability for securing the goods is that expert knowledge is important for the assessment of the liability for loading. In the Danish Supreme Court's judgment U.1980.96 H, a shipper hired a freight forwarder (speditør) who loaded the goods into the hauliers truck *in conjunction with the haulier*. The goods were damaged partially because of improper loading. The Supreme Court found that the freight forwarder was solely liable for the improper loading because of the freight forwarders expert knowledge regarding this. The goods were also damaged because of too high temperatures which the haulier was responsible for and liability was therefore divided.
Temporary storage	YES	Never	The carrier's liability for damage or loss of goods during storage is not governed by the Danish CMR-Act but by general rules regarding storage liability. Liability is based on negligence and the carrier is liable for damages or loss due to his own acts and omissions. The burden of proof lies with the *the carrier as* custodian *of the cargo*. In U 2000.2186 S a shipper had entered a contract of carriage with a carrier regarding a consignment of cellphones. During the carriage the consignee cancelled the purchase and the shipper asked the carrier to temporarily store the phones until the shipper found another buyer. During the storage a

			number of the cellphones went missing. The carrier was found liable and the Commercial and Maritime High Court stated that the carrier had not lifted the burden of proof that he had not acted negligently. In a similar case 1972.529 H the Danish Supreme Court found that the custodi*an* had the burden of proof a*nd* that he had not acted negligently. If the carrier entrusts the storage with third party the carrier is liable that the choice of third party is made with due care. It is the c*laimant's* burden of proof that the carrier did not choose the third party with due care.
Reload/transit	YES	Never	If the reloading happens while the goods are in the possession of the carrier, he will be liable for damage or loss according to section 24 of the Danish CMR-Act, cf. question 8.3. In FED 1995.1405 the High Court of Appeal Eastern Division stated that the carrier was liable in accordance with the Danish CMR-Act section 24 for the damage caused by the carrier's reloading of the goods. The case law regarding reloading primarily regards gross negligence. The crucial element in this assessment is the contract of the parties *as described above.* In the judgment U 1993.1034 H the carrier and shipper had an agreement that the shipper m*ust not re*load the goods. However, the carrier did reload the goods unto a vessel. Consequently, the goods were damaged. By not acting in accordance with the contract the carrier had acted with gross negligence and could not limit his liability. In ND 2011.269 the parties t*o* the contract had not agreed upon the possibility of reloading. However, the c*laimant* a*lleged* that the carrier was grossly negligent when he reloaded the goods. The Court found that reloading was necessary for the performance of the carriage. Thus, the carrier was not liable.
Traffic	YES	Never	The carrier's liability for traffic accidents is described in question 9.1. If no date of delivery is agreed upon the carriage is delayed when the actual period of carriage exceeds the time r*equired by a diligent carrier acting professionally*. Factors such as traffic m*ay* influence h*ow long time is deemed reasonable in this regard*. However, there is very little case law regarding this.

Weather conditions	YES	Never	Weather will only r*elieve* the carrier from liability *in exceptional circumstances.* It is a requirement for exemption from liability that the weather condition could not have been foreseen in any way.
Overloading	YES	Never	If the information in the consignment note provided by the shipper regarding the weight of the cargo is inaccurate and the carrier consequently suffers a loss the shipper is liable for the damage according to the Danish CMR-act section 9. However, if the carrier himself overloads the vehicle he is liable for the damage of the goods according to section 24 of the Danish CMR-act. This follows from the wordings of the respectively section 9 and 24.
Contamination during / after loading	YES	Never	*Section 24 of the Danish CMR-Act.*
Contamination during / after discharge	YES	Never	*Section 24 of the Danish CMR-Act. Carrier's liability ends at the time the goods is at the disposal of the consignee.*

13. Successive carriage (art. 34 – 40)

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

This is answered in question 1.4. As described there successive carriage hardly ever appears in practice and this chapter does not give rise to case law in practice.

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

According to the Danish CMR-Act section 46 subsection 1 the carrier who has paid compensation, shall be entitled to recover the compensation together with interest thereon and all costs and expenses from the other carriers who have taken part in the carriage according to the following conditions:

The carrier who has caused the damage is solely liable to damages.

If more than one carrier has caused the damage each shall pay an amount proportional to their share of the liability.

If it cannot be ascertained who is responsible for the damage the carriers will each pay a part of the compensation corresponding to their share of the freight for the carriage.

If a carrier is unable to pay his share of the compensation according to subsection 1 his share will be divided between the other carriers of the carriage according to their share of the freight for the carriage, cf. subsection 2 of the provision.

According to subsection 3 the carriers can derogate from subsection 1 and 2 by agreement.

The period of limitation applies to recourse claims as well. However, the period of limitation shall begin to run either on the date of the final judicial decision fixing the amount of compensation or if there is no such judicial decision from the actual day of payment.

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

N/A

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	A*ct* nr. 1246 of 18 December 2012 i*s the* foundation for the ratification of UNECE's additional protocol of 20 February 2008, changing the Danish CMR-Act section 6, 8, 14 and adding section 8 a.	According to section 6 subsection 3 the consignment note can be made up digitally. The digital consignment note is equal to a non-digital consignment note. It should be noted that section 8 a contains further requirements for the E-CMR note than the requirem*ents to* a non-digital consignment note.	N*/A*	N*/A*

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?

N/A