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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	Art. 4: 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.	Sect. 408 German Commercial Code	BGH, 27.01.1982 - I ZR 33/80, NJW 1982, 1944	Quote from decision: "… the absence of a consignment note does not affect the validity and content of the contract (Art. 4 S. 2 CMR; […]); because the contract of carriage under CMR […] is consensual in the same way as the other contracts of carriage by land[. T]he consignment note is a document of evidence and has no constitutive function, but in certain cases it has a meaning for the existence of a presumption: Art. 9 II CMR; as protection for the carrier in the exercise of the right of disposal: Art. 12 (V)(a) CMR; for the indication of value: Article 24 CMR; for the indication of special interest: Article 26. "

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

Yes/No	Convention	National law	Landmark cases	Clarification

YES	Art. 1	n/a	BGH, 18.04.2013, I ZR 66/12, TranspR 2014, 82 para 25; BGH, Urteil dd 28.02.2013 - I ZR 180/11, TranspR 2013, 290, para. 24	BGH, TranspR 2018, 82 inrelation to a multimodal carriage: "However, it could be - which is possible in principle ([see BGH, I ZR 180/11]) - that the parties have agreed that the CMR regulations apply to the entire transport up to the place of destination.

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	Art. 1 (4) lit. a): human remains Art. 1 (4) lit. c): furniture removals	Sect. 451 GCC regarding furniture removal	N/A for human remains; for furniture removals: OLG Düsseldorf, 03.05.1984, TranpR 1984, 198; OLG Hamburg, 28.02.1985, TranspR 1985, 188	The exception of Art. 1 (4) lit. a) CMR also includes funeral fittings accompanying human remains (such as coffins & wreaths unless they are transported without the human remains f.e. from the manufacturer to the morgue)) It is not necessary that a contract for furniture removal within the meaning of Art. 1 (4) lit. c) CMR obliges the carrier to (un)pack and assemble the goods.

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**	In Germany, hybrid forms of forwarding contracts such as "lump-sum forwarding contracts" ("Fixkostenspedition", Sect. 459 GCC) or groupage exist. These will be considered as a contract for carriage within the meaning of the CMR. However, freight forwarding contracts within the meaning of Sect. 453 GCC will not be subject to the CMR.	BGH, 14.02.2008, I ZR 183/05, TranspR 2008, 323	Quote from BGH TranspR 2008, 323: "Forwarding at fixed cost falls within the scope of CMR, [...]. The decisive factor here is the need for an autonomous interpretation of the CMR, separate from the complementary applicable national law ([...]). The wording of the binding (Art. 51 CMR) English and French original versions of the CMR does not preclude this. The type of contract covered by the CMR is referred to in the original English text as "[...]" and in the original French version as "[...]". A characteristic feature of the contractual form governed by Art. 1 (1) CMR is therefore that it concerns the carriage of goods against payment. However, this also applies to the fixed cost freight forwarder, who acts on his own account. [...]The fixed cost freight forwarder can only make his offer at fixed rates if he can oversee his costs. This presupposes [...] that he has the organisational power of disposal over the requested carriage. He is then the contractual carrier [...], who is not obliged to render accounts to his principal after

				the transport has been carried out ([…]).
☐	**Physical distribution**	???	????	???
☐	**Charters**	no statutory rules	OLG Nürnberg, . 14.04.2015, 3 U 1573/14, TranspR 2015, 194 and BGH, 4.04 2016, I ZR 102/15, TranspR 2016, 301. OLG Saarbrücken, 24. 2. 2010 - 5 U 345/09-84, TranspR 2011, 25	It is somewhat unclear how to differentiate between a haulage contract and the chartering of a truck plus driver. In the case references the BGH said: "There is no legally unambiguous concept of a haulage contract. These contracts can be service contracts, service provision contracts, civil law contracts for work and labour, rental contracts or mixed contracts ([...]). It is a contract that contains both elements of a rental contract and service provision if it is characterised by the fact that a vehicle with a driver is made available for any load and journey according to the instructions of the principal ([...]). However, if the contractor is obliged to ensure the success of the transport, he becomes the carrier ([...]). [circumstances of the individual case decide]. The Court of Appeal [...] assumed that there was no contract of carriage. [...] The personnel employed for this purpose drove exclusively for the [claimant]. The latter had given the driver instructions, without informing

				the defendant beforehand, as to which driving orders were to be carried out and how. The defendant had fulfilled its contractual obligations by providing the driver and the truck.
☐	**Towage**	Unklar	none	Apparently not applicable as towage contracts would be considered service contracts rather than contracts of carriage. The differentiaion would (based on cases on national transport law) likely be drawn on the question of whether the "carrier" takes the towed object into his care and custody. If so, a (CMR-) transport is likely.
☒	**Roll on/roll off**	Unklar	BGH, Urteil dd 25.10. 2012, I ZR 167/11, TranspR 2013, 239	RoRo transport covered by CMR if other prerequistes of Art 2 CMR are fulfilled.
☐	**Multimodal transport**	ss. 452 et seq German Commercial Code	BGH, 17.07. 2008 – I ZR 181/05, TranspR 2008, 365 (and also BGH, 24.6.1987, I ZR 127/85 = BGHZ 101, 172; though the relevant part is not reproduced there, which led (from the BGH's point of view) to a mis-application of the decision from 1987 by the English CoA in Quantum Corporation Inc v. Plane Trucking Ltd and Another ([2002] 1 WLR 2678 (CA) = ETR 2004, 535; see also the case commenht in EJCCL 2009, 39 and	The BGH held that the CMR does not apply to multimodal carriage contracts (even if the road leg involved is international); the CMR only applies eo ipo to unimodal carriage. However, the CMR may apply if the national law that applies to the road transport, refers the matter to the CMR. So if German law applies to the multimodal carriage and it is established that the loss/damage occured during an international roar haulage leg of the

			"Multimodal Transport including Cross-Border Road Haulage – Will the CMR apply?", EJCCL 2010, p. 153-)	transport, the CMR would apply as part of German law (but not eo ipso). Consequently: If the multimodal carriage is subject to the law of a couintry that does not lead to the application of the CMR (e.g. Japan) the international road leg of the carriage is not subject to the CMR.
☐	**Substitute carriage**[1]	Sect. 428 GCC, Sect. 278 German Civil Code	oder soll das Art. 18 (4) MÜ sein? Unklar	Re Art. 3: not a liability provision but only for the allocation of liability to the carrier; thus presupposes applicability of CMR
☒	**Successive carriage**[2]	none	No case by German courts known that related to a case of successive carriage	It is to be assumed that if a case of successive carriage were to be brought before German courts, the German courts would apply the CMR to it. However, given the stringent requirements placed on successive carriage, we know of no case where German courts applied these rules of the CMR.
☒	**'Paper carriers'** [3]	Sect. 407 GCC	OLG München, 27.11.1992, 23 U 3700/92, TranspR 1993, 190	The main CMR carrier may full subcontract the carriage to another carrier.

[1] partly art. 3

[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

				OLG München: If a CMR consignment note is issued falsely or the carrier is falsely listed as a "CMR-carrier", the contract for carriage is not automatically subject to the CMR but only if the the other party has made dispositions relying on the correctness of the consignment papers.

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

n/a

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	Art. 4 CMR	Sect. 408 GCCSection 408 Consignment note; power to make regulations (1) The Contractual Carrier may require a consignment note to	See 1.1.	See 1.1 Additionally: While the consginment note is not mandatory under national law, the sender can as per

			be issued containing the following particulars: 1. place and date of issue; 2. name and address of the Consignor; 3. name and address of the Contractual Carrier; 4. place and date of taking over of the goods and place designated for delivery; 5. name and address of the consignee and notify address, if any; 6. description in common use of the nature of the goods and the method of packaging, and, in the case of dangerous goods, their description as required by the regulations concerning dangerous goods, or, in the absence of such requirement, their generally recognised description; 7. number of cargo units and their special marks and numbers; 8. the gross weight of the goods or their quantity otherwise expressed; 9. the freight owed on delivery and any costs to be incurred up to the time of delivery,		Sect. 408 GCC request that the carrier issues a consginment note. Should no consignment note be issued upon the sebder's request, the sender might excercise its right of retention, rescind the contract and claim damages.

			as well as a statement concerning payment of the freight; 10. any amount of „cash on delivery charges“ to be collected on delivery of the goods; 11. instructions relating to customs and other official processing; 12. any agreement concerning carriage in an open unsheeted vehicle or on deck. Any other particulars which the parties may deem useful may be entered in the consignment note. (2) The consignment note shall be issued in three originals signed by the Consignor. The Consignor may require the Contractual Carrier also to sign the consignment note. Reproductions of the personal signatures by means of printing or stamp are sufficient. One original shall be for the Consignor, one shall accompany the goods and one shall be retained by the Contractual Carrier. (3) An electronic record having the same functions as a		

			consignment note shall be deemed equivalent to a consignment note, provided the authenticity and integrity of the record is assured (electronic consignment note). The Federal Ministry of Justice and Consumer Protection is hereby empowered to determine by regulation, issued in agreement with the Federal Ministry of the Interior and not requiring the consent of the Federal Council (Bundesrat), the details concerning the issue, accompanying carriage and presentation of an electronic consignment note, as well as the particulars of the process of making entries to an electronic consignment note after it has been issued.		
2.2	YES	Art. 7 CMR	Sect. 414 para. 1 no. 2 GCC - Sect. 414 GCC reads: Consignor's liability in special cases, irrespective of fault (1) The Consignor shall, even if he is not at fault, compensate the Contractual Carrier for any damage, costs or expenses caused by any of the following:	Unklar	Scholars: If no consignment note is issued or a certain information is not contained in the CMR, there is no liabiliy under Art. 7 CMR, but it might follow from the underlying national law. Art. 7 CMR only applies to information contained in the note but being incorrect of incomplete.

			1. the insufficient packaging or labelling or marking of the goods; 2. the inaccuracy or incompleteness of any information in the consignment note; 3. the failure to disclose the dangerous nature of the goods; or 4. the lack, incompleteness or inaccuracy of the documents or information referred to in Section 413 (1). (2) Where conduct on the part of the Contractual Carrier contributed to any damage suffered or costs or expenses incurred, then the obligation to compensate as well as the extent of such compensation shall depend on the extent to which such conduct has contributed to the damage, costs or expenses. (3) If the Consignor is a consumer, he shall compensate the Contractual Carrier for any damage, costs or expenses pursuant to subsections (1) and (2) only to the extent that he is at fault.		The sender's liability under para. 1 and the carrier's liability under par. 3 do not require fault and are unlimited.

2.3	YES	Art. 8, 9 and 13 CMR	No equivalent to Art. 8 para. 1 CMR; §§ 409 (see text at question 2.4), 421 GCC Rights of the consignee; duty to pay (1) Following the goods' arrival at the place designated for delivery, the consignee may require the Contractual Carrier to deliver the goods to him in return for the performance of the obligations under the contract for the carriage of goods. If the goods have been delivered damaged or late or have been lost, the consignee may assert, in his own name, the rights against the Contractual Carrier under the contract for the carriage of goods; the Consignor remains entitled to make these claims. It makes no difference in this context whether the consignee or the Consignor is acting on his own behalf or in the interests of another party. (2) A consignee who asserts his right pursuant to first sentence of subsection (1) must pay any freight due up to the amount specified in the consignment note. Where no consignment note has been issued, or no	Art. 8, 9: BGH, 9.2.1979, I ZR 67/77, NJW 1979, 2471; OLG Düsseldorf, 24.09.1992, 18 U 28/92, TranspR 1993, 54 and OLG Hamburg, 18.08.1999, TranspR 2000, 220. Art. 13: n/a	Art. 8, 9: The decisions mentioned agree that infringing Art. 8 CMR does not lead to a liability, but only to adverse evidential consequences -> so that the carrier has to overcome the hurdle of Art. 9 para. 2 CMR. Art. 13: The consignee is unianimously understood to have a claim for delivery against the carrier

			consignment note has been presented to the consignee, or where the amount payable as freight is not evidenced by the consignment note, the consignee must pay the freight agreed with the Consignor, insofar as it is not unreasonable. (3) Furthermore, a consignee who asserts his right pursuant to the first sentence of subsection (1) must pay demurrage or remuneration pursuant to Section 420 (4); however, he shall only owe demurrage for exceeding the time for loading as well as remuneration pursuant to Section 420 (4) if he was notified of the amount owed on delivery of the goods. (4) The Consignor remains obliged to pay the amounts owed under the contract.		
2.4	YES	Art. 8, 9 CMR	§ 409 GCC Evidentiary effect of the consignment note (1) In the absence of proof to the contrary, the consignment note signed by both parties shall serve as prima facie evidence of the conclusion and content of the contract for the carriage of	BGH, 9.2.1979, I ZR 67/77, NJW 1979, 2471 (Art. 9 para. 2 CMR leads to a reversal of the burden of proof);	Entry was made: Generally, any statement by the carrier will will increase his buder of proof should he later wish to deviate from such statement. It is disputed whether an entry as per Art. 8 para. 3 CMR leads

			goods, as well as of the taking over of the goods by the Contractual Carrier. (2) The consignment note signed by both parties shall also establish the presumption that the apparent condition of the goods and their packaging were good at the time the Contractual Carrier took them over and that the number of cargo units, their marks and numbers corresponded with the information contained in the consignment note. However, the consignment note shall not establish this presumption if the Contractual Carrier has entered a reservation in the consignment note indicating the reasons for it; the reservation may be based on the assertion that the Contractual Carrier had no reasonable means of checking the accuracy of the information. (3) If the Contractual Carrier has checked the gross weight of the goods or their quantity otherwise expressed or the content of the cargo units and the results of said checking has been entered in the		to an analogous application of Art. 9 para. 2 CMR; Lack of entry: The presumption as per Art. 9 para. 2 CMR can be disproven by the carrier only if he is able to fully establish his counterposition ("voller Gegenbeweis")

			consignment note signed by both parties, the latter shall also establish the presumption that the weight, quantity or content corresponds with the information in the consignment note. The Contractual Carrier is obliged to check the weight, quantity or content if the Consignor so requires and the Contractual Carrier has reasonable means of checking; the Contractual Carrier is entitled to be reimbursed for his costs or expenses necessitated by such checking.		

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	Art. 11 para. 3 CMR	Sect. 413 GCC Accompanying documents (1) The Consignor shall provide to the Contractual Carrier such	BGH, 26.06.1997, I ZR 32/95 TranspR 1998, 67	The BGH held that incorrect use in the sense of Art. 11 para. 3 CMR is in any improper

			documents and such information that may be necessary for official processing prior to delivery of the goods, in particular for customs clearance. (2) The Contractual Carrier shall be liable for any damage caused by the loss of, damage to, or incorrect use of the documents given to the Contractual Carrier, unless the loss, damage or incorrect use was caused by circumstances which the Contractual Carrier could not avoid and the consequences of which he was unable to prevent. However, his liability is limited to the amount which would have been payable if the goods had been lost.		handling of the transport documents.
3.2	YES	Art. 23 para 4 CMR	Sect. 432 GCC Compensation payable for other costs If the Contractual Carrier is liable for loss or damage, he shall, in addition to the compensation payable pursuant to Sections 429 to 431, refund the freight, public levies and other charges occasioned by the carriage of the goods, in the event of damage to the goods	BGH, 10.12.2009, I ZR 154/07, TranspR 2010, 78	In the quoted decision the BGH held that according to Art. 23 (4) CMR only those costs are to be refunded which have not already affected the value of the goods at the place and time of taking over of the goods. So, if tax stamps were already affixed to the goods when they were handed over to the carrier, they are to be refunded

			however only in proportion to the amounts referred to in Section 429 (2). He is not liable for any further damages.		thereunder. However, excise duties payable on the stolen goods due to the theft in the country of the theft are not to be reimbursed; as Art. 23 para. 4 CMR only covers those items that would have accrued in case of a carriage without a loss/damage (see also LG Stuttgart, 15.12.2014, 37 O 4/14 KfH, TranspR 2015, 163). Art. 29 CMR may lead to a recovery of such items (OLG München, 21.11.2018, 7 U 4620/16, TranspR 2019, 212).
3.3	YES	Art. 11 para. 3 CMR	§ 413 GCC (see 3.1 for the text of this section)	BGH, 26.06.1997, I ZR 32/95 TranspR 1998, 67; OLG Düsseldorf, 23.12.1996, 18 U 92/96, Transpr 1997, 422.	The BGH held that incorrect use in the sense of Art. 11 para. 3 CMR is in any improper handling of the transport documents. The OLG Düsseldorf, (orbiter) indicated that not presenting all availabe documents to the coustoms authorities may be incorrect usage is the sense of Art. 11 para. 3 CMR.
3.4	YES	Art. 11 para. 3 CMR	§ 413 GCC (see 3.1 for the text of this section)	BGH, 26.06.1997, I ZR 32/95 TranspR 1998, 67; OLG Düsseldorf, 23.12.1996, 18 U 92/96, Transpr 1997, 422.	The BGH held that incorrect use in the sense of Art. 11 para. 3 CMR is in any improper handling of the transport documents. However, the OLG

					Düsseldorf clarified that checking the documents when receiving them from the sender is not using them in the sense of Art. 11 para. 3 CMR)

4. The right of disposal (art. 12)

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

Instructions as set out in Art. 12 CMR are binding orders issued by the sender or consignee entitled to dispose of the goods and which serve to specify the obligations assumed by the carrier in the contract of carriage. Instructions relate to the manner of carriage and delivery of the goods (cf. Art. 12, para. 1, second sentence of the CMR) and the operations connected with the carriage, such as customs clearance, cash on delivery, weighing, checking and refrigeration of the goods (BGH 21.9.2017, I ZR 47/16, TranspR 2018, 11, para. 18). Return transport may be considered an instruction (OLG Stuttgart 11.11.2009 – 3 U 98/09, TranspR 2010, 149, 152).

An instruction under Art. 12 CMR constitutes a unilateral declaration of intent which takes effect as such at the time when it is received by the carrier. In view of the strict liability set out in Art. 12 para. 7 of the CMR, an instruction must enter into the carrier's sphere of business in such a way that the carrier can acknowledge it in the circumstances of the individual case, provided that the diligence of a prudent carrier required in traffic is observed (BGH 21.9.2017 - I ZR 47/16, TranspR 2018, 11, para. 21).

Art. 12 CMR makes the right of the sender to give instructions not dependent on the issuing of a consignment note but on the conclusion of the contract of carriage. A consignment note is only a precondition for the consignee's right of disposal in the cases of article 12, para. 2 of the CMR, for the right of disposal of the consignee or of a third party in accordance with Art. 12 paras. 3 and 4 CMR, and for the blocking effect, which protects the carrier in accordance with Art. 12 para. 5, letter a of the CMR. Where there is no consignment note, the instruction then need only comply with the other requirements of Art. 12 para. 5 CMR (BGH 21.9.2017 - I ZR 47/16, TranspR 2018, 11, para. 22).

The instruction must be addressed to the carrier himself or, in the case of a legal entity, to a member of the management or to a person authorised to represent the carrier in legal transactions. On the other hand, it is generally not sufficient for the instruction to be sent only to the driver. The driver is generally not authorised to represent the carrier in legal transactions (BGH 21.9.2017 - I ZR 47/16, TranspR 2018, 11, para. 25).

The provision of Art. 12 para. 5 of the CMR serves to protect the carrier. On the one hand, it is intended to ensure that only the person entitled to dispose of the goods gives instructions. On the other hand, the content of the instruction should be clearly defined. Entering the (new) instruction in the sender's copy is intended to protect the carrier, in particular, against the risk of liability arising from incorrect delivery of the goods (BGH 4.7. 2002 - I ZR 302/99, NJW-RR 2002, 1608, 1609).

If a consignment note has been issued, the validity of an instruction given by the sender is in principle subject to fulfilment of the condition set out in Art. 12 para. 5 a) CMR. Unilateral instructions given without legitimation and/or not entered in the consignment note are, in principle, of no concern to the carrier (BGH 4.7. 2002 - I ZR 302/99, NJW-RR 2002, 1608, 1609).

The parties to the contract of carriage are free to deviate from their original contractual agreements. They may agree that the carrier shall treat an instruction as binding even though the sender's copy of the consignment note was not available to him or the instruction was not entered in the consignment note. However, strict requirements shall be imposed on such an agreement, since it must generally be assumed that the carrier intends to waive the protection of Art. 12 para. 5 a) CMR (BGH 4.7. 2002 - I ZR 302/99, NJW-RR 2002, 1608, 1609).

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)?

The application of Art. 12, para. 7 case 1 CMR does not require a consignment note to be issued (BGH 21.9.2017 - I ZR 47/16, TranspR 2018, 11, para. 22).

Art. 12 para. 7 CMR establishes unlimited, fault-based liability on the part of a carrier who has not carried out the instructions given or who has carried them out without the first copy of the consignment note being produced (OLG Bamberg, 7.2.2007 - I U 162/06, BeckRS 2007, 10906).

The BGH treated the case of goods being delivered to a recipient no longer required to give acknowledgement of receipt as a result of an instruction being disregarded, exclusively as loss of the goods. According to the BGH, in this case the carrier is solely liable under Art. 17 CMR ff. The extent of the obligation to pay compensation is based on Art. 23, 29 CMR. In the case decided by the BGH, no consignment note was issued. (BGH 27.1.1982 - I ZR 33/80, NJW 1982, 1944).

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	Art. 14 para. 1, 15 para. 1, 16 para. 1, 17 CMR	§ 419 GCC	OLG Düsseldorf 12.12.1985 - 18 U 90/85, VersR 1986, 1096	The OLG Düsseldorf held, that the carrier is not entitled to recover the costs of carrying out the instructions in accordance with Art. 16 para. 1 CMR if these costs were caused by a wrongful and culpable delay of the carrier in asking for instructions, asking the wrong person for instructions or if he provided false information. The carrier is also liable for damage of the goods or delays in delivery before the time of delivery or the unloading of the goods in accordance with Art. 17 ff CMR.
				OLG Hamm, 11. 3. 1976 - 18 U 245/75, NJW 1976, 2077	The OLG Hamm held that if the carrier violates his obligation to ask for instructions thereby causing damages not covered by Art. 17 CMR, he is nevertheless liable under national law. Art. 17 CMR does not exclude further damage claims for damages that are not covered by Art. 17 CMR.

5.2	YES	Art. 15, 17 CMR		OLG Hamburg, 25.2. 1988 - 6 U 194/87, TranspR 1988, 277 f; OLG Stuttgart, 13.10.1999 - 3 U 176/96, TranspR 2001, 127	The decisions by OLG Hamburg and OLG Stuttgart show, that the carrier is liable for the prevention of the delivery of the goods if he does not put reasonable effort into identifying the recipient of the goods. The OLG Hamburg held that the lack of a specific address alone is not a circumstance preventing the delivery of the goods. Instead, the carrier needs to take all reasonable measures to identify the recipient. Unreasonable are only extensive and time-consuming measures. The OLG Stuttgart held, that if the carrier cannot identify the recipient, for example because he finds another company's site under the address indicated on the consignment note, he has to ask for instructions. If the carrier delivers the goods to a false recipient he can only claim circumstances the carrier could not avoid in the sense of Art. 17 (2) CMR, if he tried any conceivable and even slightly promising measures to get an

					impression of the recipients legitimacy.

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	Art. 23, 25 CMR	Section 431 GCC Limit of liability (1) The compensation payable for loss or damage pursuant to Sections 429 and 430 is limited to the amount of 8.33 units of account per kilogram of the goods' gross weight. (2) If the goods consist of several cargo units (cargo) and only some of the cargo units have been lost or damaged, then the limit of liability pursuant to subsection (1) shall be calculated on the basis: 1. of the entire cargo if the entire cargo has depreciated in value; or 2. of the part of the cargo that has depreciated in value, if only a part of the cargo has depreciated in value. (3) The liability of the Contractual Carrier for delay in delivery is	BGH, 11.10.2018, I ZR 18/18, TranspR 2019, 18	The BGH held that the weight of undamaged, re-usable pallets is not part of the „gross weight short" in the sense of Art. 23 para. 3 CMR. For the case at hand (specialised pallets for the transport of car engines) this meant that the carrier only had to compensate the damage based on the weight of the engines themselves (12,528 kg) not taking into account the weight of the undamaged pallets (5,400 kg). The decision will certainly be applicable to standardised pallets, pallet cages etc. and might be extendable to containers used in sea transport and also to swap bodies. The court explicitly noted that the packaging is part of the "consignment" in the sense of Art. 25 para. 2 CMR so that it is relevant for the calculation of the

		limited to an amount equal to three times the freight. (4) The unit of account referred to in subsections (1) and (2) shall be the Special Drawing Right as defined by the International Monetary Fund. […]		loss on a weight-basis. The court also held that the packaging is part of the "goods" in the sense of Art. 23 CMR.

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

The sender's liability covers all personal injury and damage to property suffered by the carrier himself and third persons not being contracting parties to the transport in question. The sender must also bear the costs arising from defective packaging e.g. for repairing/replacing the packaging, transhipment, cleaning of the truck. Pure financial losses e.g. demurrage are also covered as liability is unlimited unless limitations of liability follow from the underlying national law; which they do not under German law (sect. 414 para. 1 no. 1 GCC).

The sender's liability may be diminished through Art. 17 para. 5 CMR if for example the carrier fails to notifiy obvious packaging defects as per Art. 8 para. 1 lit. b CMR.

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

The reservation must be made by (a person having been authorised by) the consignee and be addressed to the carrier to be held liable, or to the delivering driver in case of apparent loss or damage. (Case law: BGH, 12.12.1985, I ZR 88/83, TranspR 1986, 278; OLG Frankfurt, 6.07.2004, 8 U 151/03, OLGR Frankfurt 2004, 354).

The reservation must be sufficiently clear to inform the recipient that a loss or damage occurred and to allow the carrier to undertake checks, investigations and preserve evidence. So the loss or damage must not be described in the greatest possible detail; also the causal reason for of the loss does not need to be stated. This means that, conversely, it is not necessary that the carrier is being held liable in the reservation and that general statements like “goods damaged” are insufficient. (Case law: OLG Hamburg, 27.01.2004, 6 U 151/03, TranspR 2004, 215)

Only when the loss or damage is not apparent, the reservation must be made in writing, with fax or e-mail being sufficient. (Case law: OLG Hamburg, 6.12.1979, 10 U 84/78 regarding fax)

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

A loss or damage can only be "apparent" if it is readily observable by human senses. Thus if the loss/damage is only noticeable upon unpacking of the goods it is not apparent. But damaged packaging may form an indicator that the goods are damaged.

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

The CMR is not seen as influencing this point which is left to the procedural rules.

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)

The phrase "legal proceedings arising out of carriage under this Convention" is given a wide meaning, so as to cover not only claims that are based on the provisions of the CMR, but also those connected to the transport such as the carrier's claim for remuneration and expenses or claims under tort law. (Case law: BGH, 20.11.2008, I ZR 70/06, TranspR 2009, 26).

The phrase is also understood to mean that there must be a valid CMR contract.

Provided that the main contract of carriage is subject to the CMR, the carrier's agents and servants in the sense of Art. 3 CMR are deemed "parties" in the sense of Art. 31 para. 1 CMR. The place of taking over the goods within the meaning of Art. 31 para. 1 lit. b CMR in such a case is usually not the place where the goods are taken over by the sub-carrier, but the place of departure of the main transport (BGH TranspR 2001, 452; (Case law: BGH, 20.11.2008, I ZR 70/06, TranspR 2009, 26; BGH, 31.05.2001, I ZR 85/00, TranspR 2001, 452).

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	Art. 32, 29 CMR	Please elaborate your findings and conclusions here, using a max. of 1200 characters	BGH, 14.05.2009, I ZR 208/06, TranspR 2009, 477; OLG Hamburg, 09.02.1989, 6 U 40/88, TranspR 1990, 191;	BGH, TranspR 2009, 477 and OLG Hamburg, TranspR 1990, 191: The phrase "action arising out of carriage under this Convention" is given a

				wide meaning, so as to cover not only claims that are based on the provisions of the CMR, but also those connected to the transport; BGH, TranspR 2010, 225: 1 or 3 year time bar also applies to carrier's claim for payment of freight. BGH, TranspR 1985, 182 and BGH, TranspR 2018, 11: Delivery for the purposes of Art 32 para. 1, lit. a CMR is the act whereby the carrier, with the express or tacit consent of the consignee, relinquishes custody of the goods carried and enables him to exercise effective control over them. Thus, if the consignee does not take delivery of the goods and they are then ordered by the sender to be returned to him, the time bar starts on the goods being re-delivered to the sender.

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	Art. 31 para. 1 CMR	Parties (unless they are consumers) are free to agree on jurisdition of courts or arbitral tribunals to the exclusion of all other courts.	OLG Koblenz, 22.02.2007, 6 U 1162/06, TranspR 2007, 249	The arbitration clasue contained in the FENEX conditions 1995 was found to be valid and its effect was the only the arbitral tribunal had jurisdiction.

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 German translation of the CMR uses the terms "Bedienstete und aller anderen Personen." It does not differ between agents and servants. Following the relevant English and French versions the BGH understands agents, servants and other persons of whose service the carrier makes use as persons who do not necessarily need to stand in a relationship of social dependency with the carrier and hence do not need to be employees but can also be third parties that regularly act within the transport company (BGH 14.2.1989 - VI ZR 121/88, TranspR 1989, 275, 276). Any person that the carrier uses in fulfillment of his obligations and any person that is bound to the carrier's instructions shall be included. To name examples of whom German courts have seen as included in Art. 3 CMR: sub-carriers, drivers, forwarders or other persons of whom the carrier makes use to conduct the custom clearences.

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

According to the phrasing of the relevant English and French version the carrier is liable for the acts committed by other persons during the performance of the carriage. This means the other person must be acting within the carrier's concrete duty to the consignor. The BGH held that acting within the general duty to care can be sufficient for that (BGH 27.6.1985, VersR 1985,1060) The carrier has a broader liability for acts committed by agents or servants. The latter do not necessarily have to have caused the damage during the performance of the carriage but the carrier is also liable for damage caused during other tasks the agent or servant was fulfilling for the carrier. Additionally the carrier is only liable for the acts of agents, servants or other persons if they act within the scope of their employment. To be acting within the scope of their employment BGH requires a factual connection between the damaging act and the delegated tasks (BGH 27.6.1985 - I ZR 40/83, VersR 1985, 1060). The act needs to belong into the general sphere of the delegated task (BGH 3.7.2008 - I ZR 218/05, TranspR 2008, 412). The delegation of the task must have increased the risk of the damaging act and the carrier must have been able to predict such misconduct concerning the execution of the task. The BGH has for example seen such a connection with regards to smuggling alcohol during a transport of goods (BGH 27.6.1985 - I ZR 40/83, TranspR 1985, 338) or theft (BGH 3.7.2008 - ZR 218/05, TranspR 2008, 412; BGH 2.4.2009 - I ZR 60/06, TranspR 2009, 262).

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

The BGH states, that Art. 17 CMR constitutes a liability without fault (BGH 13.4.2000 - I ZR 290/97, TranspR 2000, 407). According to Art. 17 para. 1 the carrier is liable for damage or loss that occurred from the time he took over the goods until the time of delivery. For a takeover of the goods, the carrier himself or an agent or servant (Art. 3 CMR) has to wilfully obtain direct or indirect possession of the goods. The sender therefore has to willfully give up control of the goods whilst the carrier has to wilfully take control of the goods. If the sender has to load the goods, the takeover only takes place when the loading of the goods is finalized and the vehicle is closed or the driver makes visible that he is now in control of the goods (BGH 22.5.2014 - I ZR 109/13, TranspR 2015, 33, 34). The damage can be caused before the time the carrier takes over the goods, as long as it occurs after the takeover, as the damage can then be considered to also be caused by non-sufficient damage prevention after the time of the takeover (BGH 25.1.2007 - I ZR 43/04, TranspR 2007, 314, 315). This is similar to the approach taken in § 425 GCC. If the damage is caused between the time of take over and delivery the carrier is only liable to the extent that the damage has already led to a loss of value at the time of delivery even though that might not be visible yet. In order to be held liable the carrier has to have taken over the goods in fulfillment of his contractual obligation and e.g. not due to a contract with a third party (OLG Düsseldorf 16.6.1992 - 18 U 260/ 91, TranspR 1993, 17) or loading them as a favour, in which case a liability due to § 412 GCC might nevertheless arise. The mere arrival of the goods does not lead to their successful delivery (OLG Saarbrücken 5.4.2006 - 5 U 432/05-45, TranspR 2007, 63, 64; OLG Hamburg 14.5.1996 - 6 U 247/ 95, TranspR 1997, 101, 103). For a successful delivery and hence the end of the carrier's risk of liability the recipient must obtain direct possession of the goods or the carrier must at least have given up the custody of the goods and enabled the recipient with his will and approval to take control of the goods (OLG Hamm 26.8.2013 - 18 U 164/12, TranspR 2013, 431, 432; OLG Hamburg, 14.5.1996 - 6 U 247/ 95, TranspR 1997, 101, 103).

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	Art. 17 ff CMR	§§ 432, 434 GCC	BGH 5.10.2006 - I ZR 240/03, TranspR 2006, 454;	In BGH 5.10.2006 - I ZR 240/03, TranspR 2006, 454 the BGH held that damages arising for the sender or recipient as a

					consequence of damage to the transported goods do not lead to the liability of the carrier. As the liability scheme established for fright contracts that exempts the carrier from any further liabilities shall not be undermined, damages that arise as a consequence of the damage to transported goods shall not be subjected to any other liability. If however the damage is not covered by these norms contractual liability could arise from domestic law. Damage is not covered by Art. 17 ff CMR if it does not arise from an exceedance of the delivery period, damage or loss of the goods and only occurs on protected rights other than the transported goods including the assets of the sender and recipient.
				BGH 27.10.1978 - I ZR 30/77, VersR 1979, 276	In BGH 27.10.1978 - I ZR 30/77, VersR 1979, 276 the BGH held that in cases, which are not covered by the CMR and where the CMR does not regulate the contractual liability definitively,

					liability could arise under domestic law.
8.5	NO	Art. 17 para. 3 CMR	§ 427 sub 1 no. 3 GCC	-	Containers are not considered vehicles and hence the carrier is not liable for damages caused by them. However the carrier is liable if the container is permanently attached to the vehicle (Koller, Transportrecht, 10 ed. 2020, Art. 17 para. 34). Trailers on the other hand are considered vehicles, thus the carrier is liable for damage caused by a defect or ill-use of the trailer (Helm, Frachtrecht, Volume 2, 2nd ed. 2002, Art. 1 CMR para. 35).
8.6	YES	Art. 20, 21, 22 CMR		Art. 20 CMR: BGH 09.09.2010 I ZR 152/09, TranspR 2011, 178; BGH 15.10.1998 - I ZR 111/96, NJW 1999, 1110; BGH 25.10.2001 - I ZR 187/99, TranspR 2002, 198	Art. 20 CMR: BGH 09.09.2010, BGH 15.10.1998, & BGH 25.10.2001: Art. 20 para. 1 enables the person entitled to damages to choose whether to invoke the presumption of loss and claim damages or whether to wait for the goods to be found and demand the handover of the goods as well as damages for exceeding the delivery time limit and/or damages to the goods.

				Art. 21 CMR: BGH 25.10.1995 - I ZR 230/93, NJW-RR 1996, 353; BGH 10.10.1991 - I ZR 193/89, NJW 1992, 621 Art. 22 CMR: BGH 16.10.1986 - I ZR 149/84, VersR 1987, 304	Art. 21 CMR: BGH 25.10.1995: Only cash can be accepted as cash on delivery charge. Whether further payment methods are eligible remains subject to national law. BGH 10.10.1991: If the carrier did not collect the “cash on delivery charge” he is only liable for the damage that has occurred due to the delivery of the good without collecting the charge. The compensable damage is limited by the cash on delivery charge, it is however not generally as high as the charge. The person entitled to the damages generally carries the burden of proof. Art. 22: If the danger of goods was not indicated in the consignment note it cannot be assumed that the carrier is aware of the nature of the goods because this was indicated in additional paperwork handed to the carrier. An explicit indication

					no later than the moment of takeover is nececessary.

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 BGH understands "circumstances which the carrier could not avoid and the consequences of which he was unable to prevent" to exist when consequences were unavoidable even though the carrier acted with utterly reasonable care (for example in BGH 8.10.1998, TranspR 1999, 59). This requires more than the common care and attention (OLG Hamburg 28.7.1999 - 6 U 32/99, TranspR 2000, 176). Which measures the carrier has to take to act with utterly reasonable care depends on the individual circumstances. The higher the risks of the carriage are, the higher are the demands concerning safety measures (BGH 13.4.2000 - I ZR 290/97, TranspR 2000, 407, 408). The kind of care is required that could have prevented even an atypical cause for damage. Only efforts to prevent possible damage that are at first sight unsustainable, absurd and hence seem unacceptable are not required (OLG Nürnberg 8.1.2010 - 12 U 1596/09, VersR 2011, 1032). All thinkable measures to avoid possible damages have to be considered, including those involving economic disadvantages besides those that are absurd (OLG Hamm 6.1.1997 - 18 U 92/96, TranspR 2000, 179, 180).

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

If the damage arises due to one of the causes listed in Art 17 para. 4 CMR, the carrier is freed from liability completely. According to Art. 18 para. 2 CMR it shall be presumed that the risk was caused by one of the situations listed in Art. 17 para. 4 if the carrier shows the causal connection between the listed risk and the loss or damage, or if the loss or damage usually follows from the risk (BGH 15.6.2000 - I ZR 55/98, TranspR 2000, 459, 462). Exceptions with regards to that presumption listed in Art. 18 para. 3-5 apply.

The BGH stated, that for the carrier to be freed from liability according to Art. 17 para. 4 a) CMR when using open unsheeted vehicles, the use of such a vehicle must have been expressly agreed and specified in the consignment note even if the good, due to its seize or composition, could not have been transported in a closed vehicle (BGH 28.2.2013 I ZR - 180/11, VersR 2014, 219).

The carrier is also freed from liability if the damage or loss arose due to the handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf of the sender or the consignee (Art. 17 sub. 4 c) CMR). With regards to damages or losses arising due to the loading of goods the BGH held that the loading has been handled inadequately if the goods are not secured against events that could occur under normal transport conditions such as moving due to emergency braking (BGH 19.3.2015 I ZR 190/13, TranspR 2015, 342, 343).

According to Art. 17 para. 4 d) CMR the carrier's liability is also excluded if the nature of the goods particularly exposes them to total or partial loss. In a case concerning the spoilage of bell peppers the OLG Frankfurt held that the assessment whether the nature of the goods particularly exposes them to loss is not only dependent on the general vulnerability of the goods to damages but also depends on the general circumstances under which the contract of carriage is executed such as the duration of transport. In the case the OLG had to decide the carrier could not rely on the exemption due to the nature of the goods he transported, as the spoilage occurred due to a longer interruption of the transport caused by a defect of the vehicle (OLG Frankfurt a.M. 8.7.1980 - 5 U 186/79, BeckRS 2014, 21436).

Art. 17 sub. 4 e) CMR stipulates that the carrier is also freed from liability if the damage or loss occurred due to insufficiency or inadequacy of marks or numbers on the packages. The BGH however held, that the mere designation of goods is sufficient if the loss only arose due to a fault of the carrier, such as combining two separate orders without sufficient care and thereby causing a mix up (BGH 27.10.1978 - I ZR 30/70, NJW 1979, 2473).

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	Art. 23-28 CMR	Sect. 429 GCC Compensation based upon value (1) If the Contractual Carrier is liable for damages resulting from the total or partial loss of goods, he shall pay the value that the goods had at the place and time they were taken over for carriage. (2) In the event of damage to the goods, the compensation payable shall be the difference	BGH, 19.09.2019, I ZR 64/18, TranspR 2019, 502; BGH, 13.02.1980, IV ZR 39/78, NJW 1980, 2021; OLG Düsseldorf, 21.11.2012, I-18 U 43/12, TranspR 2013, 116; OLG Celle, 20.06.2002, 11 U 181/01 TranspR 2004, 122; OLG Hamburg, 11.9.1986, 6 U 105/86, VersR 1987, 375	BGH, NJW 1980, 2021: carrier is not obliged to restitute in kind or to pay the necessary repair costs, but only to reimburse the depreciation caused by the damage. Therfore granting a claim for payment of the necessary repair costs, in addition to the right to reimbursement of the depreciation provided for in Art. 25 CMR, would lead to

			between the value of the undamaged goods at the place and time they were taken over for carriage and the value that the damaged goods would have had at the place and time they were taken over for carriage. The costs necessary to mitigate or remedy the damage are presumed to be equal to the amount of the difference determined in accordance with the first sentence. (3) The value of the goods shall be determined by reference to their market price, or, if there is no such market price, the normal market value of goods of the same kind and having the same characteristics. If the goods were sold immediately prior to being taken over for carriage, the purchase price noted in the seller's invoice, including the costs of carriage comprised therein, shall be presumed to be their market price.		the same damage being compensated twice. OLG Celle, TranspR 2004, 122: repair costs are an indication of the actual depreciation in value. The sales value of the damaged goods is subtracted from the sales value of the undamaged goods to determine the depreciation amount (OLG Hamburg, VersR 1987, 375). BGH, TranspR 2019, 502: A damage caused by delay in the sense of Art. 23 para. 5 CMR, which coincides with an additional damage to goods within the meaning of Art. 23 para. 1 CMR, without there being a causal connection between the two damages, is cumulatively compensable. Costs for minimising the loss are recoverable: examples (OLG Düsseldorf, TranspR 2013, 116) incl. expert, sorting, (re)packaging - provided they serve to check the functional capability, safety and recycling possibility and not merely to determine the damage.

10.2	YES	Art. 24, 26 CMR	Sect. 449 GCC Deviating agreements on liability (1) Insofar as the contract for the carriage of goods is not for carriage of letters or similar items, anyagreements deviating from the liability provisions in Sect. 413 (2), 414, 418 (6), 422 (3), 425to 438, 445 (3) and 446 (2) may only be made, if they have been individually negotiated, whetheragreed for one or several similar contracts between the same parties. […] (2) In derogation from subsection (1), also standard contract terms may limit the compensation payable by the Contractual Carrier for loss of, or damage to, the goods to an amount other than that provided for in Sect. 431 (1) and (2), if: 1. this amount lies between 2 and 40 [SDR] and the user of the standard contract terms has informed his contracting partner in an appropriate manner, that the standard contract terms provide for an amount other than the statutory amount, or	BGH, 14.07.1993, I ZR 204/91, TranspR 1993, 426	BGH, TranspR 1993, 426: To be valid, the amount of special interest in the sense of Art. 26 CMR must be stated in the consignment note. It is in dispute whether a surcharge on the fright is necessary.

			2. this amount is less favourable to the user of the standard contract terms than the amount provided for in Sect. 431 (1) and (2). Furthermore, the compensation payable by the Consignor pursuant to Sect. 414 may, in derogationfrom subsection (1), be limited in amount, also by standard contract term		

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)

Apart from intentional acts the carrier is fully liabe in case his acts or omissions are done "recklessly [leichtfertig] and in the knowledge that damage would probably occur"; a definition taked from Sect. 435 GCC; see for example BGH, 20.01.2005, I ZR 95/01, TranspR 2005, 311. The "recklessness" is an objective test, while the knowledge of the probably loss adds a subjective element. The element of recklessness requires a particularly serious breach of duty, in which the carrier or his agents/servant grossly disregard the security interests of other the contracting party. The subjective requirement of awareness of the likelihood of damage occurring is an awareness that the reckless conduct of the actor forces upon him. Given that such knowledge is an that cannot be determined extrinsically, it is to be assumed if the reckless conduct, according to its content and the circumstances in which it occurred, justifies this conclusion; BGH, 30.09.2010, I ZR 39/09, TranspR 2010, 437.

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?

see above

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	NO	Sometimes	There do not seem to be any cases related to good being stolen while the truck was moving. There are, however, cases in which trucks were stopped on the road by armed robbers. Such armed robberies may be considered unavoidable in the sense of Art. 17 para. 2 CMR; OLG Köln, decision dated 3 December 1998, 12 U 121/97, TranspR 2000, 462; BGH, decision dated 18 January 2001, I ZR 256/98, TranspR 2001, 369. This last decision explicitly points out that even in the case of a robbery the carrier has to show that the attack could not have been avoided by exercising at the most care; see also BGH, decision dated 25 October 2001, I ZR 24/01, TranspR 2003, 349; BGH, decision dated 13 November 1997, I ZR 157/95, TranspR 1998, 250.
Theft during parking	YES	Never	Theft during parking is always considered avoidable in the sense of Art. 17 para. 2 CMR. Consequently, the carrier is always liable - which leads to the question of breaking the limits of liability. As with the preceding situation, armed robberies during parking situations are generally considered unavoidable in the sense of Art. 17 CMR.
Theft during subcarriage (for example an unreliable subcarrier)	YES	Never	If a theft occurs during sub-carriage, the carrier will be treated as if the theft occurred during his carriage. In other words, if the acts and omissions of the sub-carrier lead to a liability under the CMR (be it limited or unlimited) the carrier is liable (either to a limited or an unlimited amount). The sub-carrier is considered an “other person” in the sense of Art. 3 CMR; cf. BGH, decision dated 25 July 2019, I ZB 82/18, TranspR 2019, 508.
Improper securing/lashing of the goods	YES	Sometimes	The obligation to secure and lash the cargo is not ruled by the CMR. Instead, this is either ruled by the underlying national law or (in as far as possible) by the contractual arrangement between the parties. However, if the parties deviate from the contractual arrangement (i.e. the carrier loads and stows the goods even though he was not obliged to do so) the liability is assessed from the actual acts rather than contractual arrangements; BGH, decision dated 25 January 2007, I ZR 43/04, TranspR 2007, 314.

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

			If the sender is obliged to stow and secure the goods, Art. 8 CMR does not oblige the carrier to check whether the storage and securing was done correctly; OLG Düsseldorf, decision dated 1 July 1995, 18 U 207/94, TranspR 1996, 109. Commentaries have considered the possibility that in cases where the securing of the cargo is done by the sender and the carrier has knowledge of its insufficiency that the omission to inform the sender of such insufficient stowing might give a rise to a liability of the carrier. In case the carrier is (by national law or by contract) obliged to indicate the securing/lashing of the goods, he is liable for failing to discharge these duties properly.
Improper loading or discharge of the goods	YES		see above
Temporary storage	YES	Never	Under Art. 12 CMR the carrier may be directed to store the goods temporarily; BGH, decision dated 27 January 1982, I ZR 33/80, VersR 1982, 669. Consequently, temporary storage of the goods does not lead to a shifting of liability compared to an on-going transport. It has been argued that this does not relate to long term storage, though there is no clear understanding of what a long time storage may be.
Reload/transit	YES	Never	Please elaborate your findings and conclusions here, using a max. of 3000 characters, please include case law
Traffic	YES	Never	Traffic is generally considered to be within the carrier's sphere of risk. LG Hamburg, decision dated 30 August 2012, 409 HKO 126/11, concerned a case where the goods could not be picket up at the agreed time to delays in traffic of the foregoing transport. The court held that not only was the carrier liable, but it would also not limit its liability as instructions should have been given to the sub-carrier to ensure a timely transport.
Weather conditions	YES	Sometimes	Similar to traffic conditions the weather on route is at the carrier's risk. In a case decided by OLG Hamm, 15 September 2008, 18 U 199/07, TranspR 2009, 167, goods were to be picked up at 5 pm latest. In this case the autobahn was closed due to bad weather. Given the weather forecast it was foreseeable that the driver allocated to that transport would not be able to make the pick-up of the goods in time and deliver them within the agreed time period. Not planning the transport in such fashion that it could be made timely was also found to be grossly negligent in the sense of Art. 29 CMR. OLG Düsseldorf, decision dated 3 June 1993, 18 U 7/93, NJW-RR 1994, 1523, held that it is the carrier's obligation in Alpine regions to assess the usability of roads before commencing the

			transport (though it is not entirely clear whether the lack of usability related to the weather conditions or the general dimensions of the road). OLG Hamburg, decision 7 March 2018, 6 U 40/16, TranspR 2018, 301, discusses a case where a truck was turned over due to strong wind. The court held that this was no indication of gross negligence in the sense of Art. 29 CMR. It nevertheless held the carrier liable within the limits of the CMR. OLG Düsseldorf, decision dated 27 February 1997, 18 U 104/96, TranspR 1998, 194, concerned a case where a truck was supposed to take a ferry across the Mediterranean. The ferry was late due to bad weather at sea. This delay of the ferry was held to be unavoidable in the sense of Art. 17 para. 2 CMR for the road carrier.
Overloading	YES	Never	The carrier is not liable for a delayed delivery, if the delayed delivery is due to the truck being stopped at the border for excessive weight in a situation where the truck was loaded by the sender; LG Köln, 16 September 1988, 87 S 1/88, TranspR 1989, 271. If on the other hand, the overloading is attributable to the carrier, then he is liable.
Contamination during / after loading	YES	Never	If the goods have come into the carrier's custody, their contamination leads to his liability (Hazelnuts and Bariumcarbonat, OLG Hamburg, decision dated 19. December 1985, 6 U 188/80, TranspR 1986, 146; Commingeling of two substances, OLG Köln, decision dated 26. September 1985, 7 U 8/85, TranspR 1986, 285; Hazelnuts smelling of Perfume, OLG Karlsruhe, decison dated 25 Februrary 1999, 9 U 108/96, TranspR 1999, 349);
Contamination during / after discharge	YES	Never	After discharge the goods are no longer in the carrier's custody and thus his liabiliy under the CMR ends; his liability might follow from the underlying national law. If the carrier is obliged to discharge, contamination at that point is a basis for his liability under the CMR. In a matter relating to national transort, OLG Karlsruhe (decision dated 02.06.2017, 9 U 122/16, TranspR 2018, 308) held that a commingeling of different fuel types as a result of the unloading (the driver had pumped fuel type A into the consignee's tank for type B and vice versa) was not a matter of liability under transport law rules as the transport had ended at that point. It seems likely that a similiar result would be found under the CMR.

13. Successive carriage (art. 34 – 40)

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

Insufficient case law to answer this question.

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

Insufficient case law to answer this question.

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

Insufficient case law to answer this question.

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	Not signed and thus ratified - therefor not part if German law	All fright documents (incl. bills of lading) may be issued in electronic form. Given that the CMR note (and its domentic counterpart) are not a "Wertpapier" there is nothing stopping the use of their electronic version. Additionally, given that the CMR note is not a requirement for a valid contract, the parties re free to choose its form.	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