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Part I (chapter I, III, V, VII)

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	Article 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.	The domestic carriage is regulated by the Transport Law Act 1984 (TLA 1984). In accordance with this act the absence of the consignment note does not affect the validity of the contract of carriage. The regulation of contract of carriage in the Civil Code is applied subsidiary.	Judgment of the Supreme Court on 3 September 2003 (II CKN 415/01): "The consignment note is not a prerequisite for conclusion of a contract of carriage, and its absence does not prevent the concluded contract from being treated as a contract of carriage subject to the provisions of the CMR. For the same reason, irregularities in drawing up the consignment note do not render the contract of carriage invalid, nor do they prevent it from being treated as a contract of carriage subject to the provisions of the CMR".	There are no doubts that the CMR is applicable to carriage of goods by road even if no consignment note is issued as long as the conditions from article 1 are met.

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

Yes/No	Convention	National law	Landmark cases	Clarification

NO	The parties cannot decide by a contractual clause to apply the CMR to a domestic transport. The CMR does not apply for domestic transport.	The provisions of the Transport Law Act 1984, particularly those governing the carrier's liability are deemed as mandatory in nature. The parties to the contract of carriage cannot change these provisions therefore cannot decide about application of the CMR to domestic carriage.	There are no landmark cases concerning this issue.	It is unclear whether the parties to a contract of carriage may decide about application of the CMR to the international carriage of goods which is not covered by the CMR (ie. funeral consignment and furniture removal).

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**	Contract of forwarding (freight forwarding agreement) is regulated in article 794 of the Civil Code and is defined as a contract under which "the forwarding agent shall assume the obligation, within the scope of the activity of his enterprise and against remuneration, to forward or to	Judgment of the Court of Appeal of Katowice on 18 April 2005 (I ACa 2051/04) – "Although the provisions of the CMR do not apply to the contract of forwarding, the assumption that a party acts as a forwarder agent and not as a carrier is possible only when he explicitly	In Polish law the forwarding agent is liable only for fault in his choice of carriers or other forwarding agents (culpa in eligendo). Therefore, relatively often in case of damage, the performing party tries to prove that it acted as a forwarding agent and not as a carrier. While assessing this

		receive a shipment or to perform other services connected with its carriage". The element that distinguishes a contract of forwarding from a contract of carriage is the content of the obligation. The forwarding agent undertakes to organize the transport of the consignment, while the carrier undertakes to transport the consignment. However, the forwarding agent can himself perform the carriage. In that case he shall have at the same time the rights and duties of the carrier.	undertakes to organize transport. The basis for distinguishing the contract of forwarding from the contract of carriage (their subject matter is similar) is not the type of undertaken activities but the content of the obligation. Therefore, we deal with the contract of forwarding only when the essence of the obligation is the organization of carriage, and not its performance, even if the carriage is performed by another carrier". Similar view in the judgment of the Court of Appeal of Warsaw of 7 September 2016 (I ACa 1421/15).	circumstance, the courts take into account, first of all, the contents of the obligation, as well as the existence of the obligation to provide additional services (e.g. packing or loading), the way of advertising services, the way of defining the remuneration (lump sum or commission) etc.
☐	**Physical distribution**	n/a	n/a	n/a
☐	**Charters**	Rental of vehicle is governed by specific rules of the Civil Code. Rental of vehicle with driver is treated as a special contract which is not directly regulated by law.	No case law available.	The CMR does not apply to a contract for rental of a vehicle with a driver.
☒	**Towage**	Unclear. Trailers can be considered to be a part of a consignment especially if a carrier picks up a trailer not belonging to him that is already loaded with the goods.	No case law available.	If a carrier picks up a trailer not belonging to him that is already loaded with the goods an application of the CMR is likely.

☒	**Roll on/roll off**	No special rules in the domestic law.	No case law available.	n/a
☒	**Multimodal transport**	There is not specific regulation for international multimodal transport. Regarding the domestics carriage the contract of carriage by road, rail and inland waterway transport is regulated in one act – TLA 1984.	No case law available.	It seems that the CMR would apply to the road leg of multimodal transport however it is not clear whether the application would be by reference in the Civil Code or rather ex proprio vigore.
☒	**Substitute carriage**[1]	Article 5 TLA 1984. "The carrier may entrust the performance of carriage to other carriers for the whole or any part of the carriage, but shall be liable for their acts as for his own".	See point 13.	The CMR is applied to substitute carriage if the conditions established in Article 1 (1) of the CMR are met.
☒	**Successive carriage**[2]	Article 6.1 TLA 1984 "Carriage may be performed by several carriers of the same or different branches of transport under a single contract of carriage and a single transport document (...); the carriers shall be jointly and severally liable".	No case law available.	The CMR is applied to successive carriage if the conditions established in Article 1 (1) and Article 34 of the CMR are met.
☒	**'Paper carriers'** [3]	Article 5 TLA 1984. "The carrier may entrust the performance of carriage to other carriers for the whole or any part of the carriage, but shall be liable for their acts as for his own".	Judgment of the Court of Appeal of Warsaw of 7 September 2016 (IACa 1421/15): "(…) the fact that the defendant did not have vehicles and drivers to carry out the carriage	The CMR is applied to "paper carriers" if the conditions established in Article 1 (1) of the CMR are met.

[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

			himself did not mean that he could not have concluded the contract of carriage, because, as has already been mentioned above, the carrier does not have to perform the service himself".	

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

No.

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

2.1. Is the consignment note mandatory?
2.2. Nice to know: Does absent or false information on the consignment note give grounds for a claim?
2.3. Is the carrier liable for acceptance and delivery of the goods? (art. 8, 9 & 13)
2.4. To what extent is the carrier bound to his remarks (or absence thereof) on the consignment note? (For instance: Can a carrier be bound by an express agreement on the consignment note as to the quality and quantity of the goods?)

Number of question	Yes/No	Convention	National law (civil law as well as public law)	Landmark cases	Clarification
2.1	YES	Article 4 CMR.	In accordance with Article 38 (1) TLA 1984 "The sender shall submit a consignment note to the carrier for the shipment of goods, and if it is generally accepted for a given type of carriage, shall in another way	Judgment of the Supreme Court on 3 September 2003 (II CKN 415/01): "The consignment note is not a prerequisite for conclusion of a contract of carriage, and its absence does not prevent the	n/a

			provide information necessary for the proper performance of carriage". Therefore, the consignment note is not mandatory in domestic carriage.	concluded contract from being treated as a contract of carriage subject to the provisions of the CMR. For the same reason, irregularities in drawing up the consignment note do not render the contract of carriage invalid, nor do they prevent it from being treated as a contract of carriage subject to the provisions of the CMR".	
2.2	YES	Article 7 CMR.	Article 72(1) TLAct 1984 "The consignor is liable for damage resulting from: 1) providing, in a consignment note or in other form, untrue, imprecise or incomplete instructions and statements or entering them in the wrong place and for the lack, incompleteness or inappropriateness of documents required pursuant to special regulations, (…)".	No case law available.	n/a
2.3	YES	Article 8, 9, 13 CMR.	Article 781 § 2 of the Civil Code „If the carrier accepts the shipment without reservations, it shall be presumed that it was in a proper condition".	No case law available.	n/a

2.4	YES	These issue is regulated by Article 8 (2) CMR and Article 9 (2) CMR. There is no possibility to change these regulations therefore all additional statements of a carrier would be only of evidentiary value. The carrier would be formally allowed to prove otherwise than in his statements.	Similarly, any additional statements by the carrier would have only probative value. The carrier would formally have the opportunity to prove something other than in its statements.	No case law available.	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	Article 11.1. CMR.	There is no specific provision in the national law in relation to this issue. However a carrier may undertake to perform customs formalities. In case of non-performance or improper performanse of his obligation the carrier is liable under the provision of the Civil Code.	In its judgment of 7 March 2017 (II CSK 242/16), the Supreme Court confirmed that the carrier's liability for failure to comply with the customs clearance obligation is governed by the Civil Code.	n/a

3.2	YES	Article 23.4 CMR.	According to Article 82 TLA 1984 "Except for the compensation provided for in Articles 80 and 81 the carrier shall return the freightage and other costs relating to the carriage of a consignment: (…)". It's not clear what is included in "other costs associated with the carriage" but it seems that customs duties should be covered.	No case law available.	n/a
3.3	YES	Article 11.3 CMR	According to Article 71 TLA 1984, "The carrier is liable for damage resulting from the loss, non-use or improper use of documents listed in a consignment note and attached to said consignment note or entrusted to the carrier, unless he is not at fault.". The carrier's liability for the documents is not limited (unlike in the case of the CMR).	No case law available.	In Polish law there are no specific provisions concerning the agent (fr. commisioner) liability for the loss or incorrect use of the documents. Therefore, the carrier is liable for loss or incorect use of the documents specified in and accompanying the consignment note or deposited with the carrier according to the general rules of contractual liability regulated in the Civil Code, i.e. on the basis of presumed fault. Limitation established in Article 11 (3) CMR applies if the contract of carriage is governed by the CMR.
3.4	YES	Article 11.3 CMR	See above (point 3.3.).	No case law available.	See above (point 3.3.).

4. The right of disposal (art. 12)

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

There is no case law available concerning Article 12 CMR. It is assumed, however, that the list of types of instructions that may be issued by a sender (consignee) included in this article is exemplary. For example, it is admissible to unilaterally amend the contract of carriage regarding the route of carriage, time limit, etc. It is not clear whether modifications of the contract of carriage may be made before the goods are accepted for carriage and the consignment note is issued.

The right to dispose of the goods belongs primarily to the sender. The consignee acquires this right upon making an entry to that effect in the consignment note (Article 12 (3) CMR). The sender's right ceases to exist when the second copy of the consignment note is handed to the consignee, or when the consignee requested the carrier to deliver to him the second copy of the consignment note and the goods (Article 13 (1) first sentence CMR), or when he enforced in his own name against the carrier any rights arising from the contract of carriage in circumstances described in Article 13 (1) sentence 2 CMR. From the moment the sender's rights expire, the carrier "shall obey the orders of the consignee" (Article 12 (2) in fine CMR).

In practice in Poland, the provisions concerning the conditions for exercising of the right of disposal, in particular the condition to produce the first copy of the consignment note, are rarely observed. Instructions are given to the carrier by the sender by phone, sms, or email without producing the first copy of the consignment note. It is also rare for the right of disposal of the goods to be transferred to the consignee by making an entry in a consignment note.

The regulation like the one contained in Article 12 CMR is also in force in domestic law. According to Article 53 (1) TLA 1984: "The consignee may terminate a contract of carriage or amend said contract requesting the carrier to:

1) return the consignment at the place of consignment;

2) deliver the consignment in a different place than the place designated in a consignment note;

3) deliver the consignment to a different person than the consignee designated in a consignment note,

2. The consignee may dispose of the consignment as prescribed in paragraph 1(2) and (3) if the consignor failed to reserve otherwise in the consignment note. The amendment provided for in paragraph 1(2) may be made by the consignee only before the arrival of the consignment to the place of destination designated in the consignment note.

3. The consignor and the consignee dispose of the consignment on the surrender of a copy of the consignment note by making a relevant written representation.

4. The right of the consignor to dispose of the consignment expires when the consignee has amended the contract of carriage, accepted a consignment note, or collected the consignment".

In practice, the requirement to produce a copy of the consignment note is also not observed in domestic transport.

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

It is understood that the liability provided for in Article 12 (7) CMR is independent of the fault of the carrier. If the damage was caused by circumstances attributable both to the carrier and to the person who gave the instructions, Article 17 (5) CMR shall be applied accordingly. Although the provision of Article 12 (7) CMR does not contain the limitation of the carrier's liability, it is considered that if the failure to follow the instructions resulted in damage to the goods, the provision of Article 23 (3) CMR shall apply and if the carriage was delayed, the compensation shall not exceed the carriage fee (Article 23 (5) CMR). The Supreme Court in the judgment of 19 February 2002 (IV CKN 732/00) and the Court of Appeal in Warsaw in its judgment of 12 February 2020 (VII AGa 868/19) indirectly confirmed that in case of liability of a carrier on the basis of Article 12 (7) CMR, as a rule the liability limits provided for in Article 23 CMR are applicable. At the same time, however, both courts held that carrying out the instructions without requesting the first copy of the consignment note constituted gross negligence precluding the possibility of availing the carrier of the provisions which exclude or limit his liability (Article 29 CMR).

In practice in Poland, as mentioned above, it is common to give instructions without producing the first copy of the consignment note.

In national law, Article 70 TLA 1984 provides that "The carrier is liable for damage resulting from non-execution or improper execution of the order to amend the contract of carriage, unless the circumstances provided for in Article 54 (1) and 54 (2) occur". It is assumed that this liability is close to absolute (with only exceptions indicated in Article 54).

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	The CMR doesn't regulate the carrier's liability for failure to ask the person entitled to give him instructions in case of impossibility as well as if he fails to take steps himself in the situation referred to in Article 14 (2) CMR. However, the carrier is liable in such a case in accordance with general rules (see clarification).	In domestic law, Article 55 (1) TLA provides for the obligation of the carrier to request instructions from the sender in case of impossibility, unless such instructions have been included in advance in the consignment note. However, it does not regulate the carrier's liability for failure to comply with this obligation. It is assumed that the general rules contained in the Civil Code apply in this case.	No case law available.	Liability for breach of the obligation to ask the person entitled to dispose of the goods for instructions and for breach of the obligation to take independent action under Article 14 (2) CMR is independent of any liability for damage to the goods or delay in carriage. This liability is not regulated by the CMR, and therefore the national law applicable to the respective contract of carriage applies. As far as Polish law is concerned, the general rules of liability for damages for failure to perform or improper performance of the contract shall apply (Article 471 et seq. of the Civil Code). If, however, as a result of violation of the obligations arising from Article 14 CMR, damage to goods or delay occurs, then the provisions of the CMR apply to the carrier's liability (Article 17 et seq. CMR).

5.2	YES	It is not excluded that the carrier is liable for circumstances prevent delivery. In such a situation he cannot claim recovery of costs caused by his request for instructions or any expenses entailed in carrying out such instructions (Article 16 (1) CMR). For damage to the goods or delay resulting from circumstances prevent delivery caused by the carrier, the carrier shall be liable in accordance with the CMR.	n/*a*	No case law available.	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	The CMR doesn't regulate this issue (see clarification).	The Transport Law Act 1984 doesn't regulate this issue either. The packaging of a consignment is considered to be its integral part. A consignment may also be the packaging itself, e.g. an empty container, empty wagons, pallets etc. Loading accessories not belonging to the carrier, such as	No case law available.	The packaging of a consignment is considered to be its integral part. A consignment may also be the packaging itself, e.g. an empty container, empty wagons, pallets etc. Loading accessories not belonging to the carrier, such as fastening belts, tyres, ropes etc.

		fastening belts, tyres, ropes etc. are also deemed an integral part of the consignment.		are also deemed an integral part of the consignment.

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

There is no case law available.

It is understood that the liability of the sender is not limited. It is not dependent on the fault of the sender. The sender is liable to the carrier also if the activities related to packing the goods were performed by a person other than the sender on his behalf. This does not apply, however, if, as agreed by the parties, the obligation to pack the goods rests with the carrier. In such a case it would have to be assumed that a defect in the packaging was known to the carrier at the time when he took over the goods.

The sender is not liable pursuant to Article 10 CMR only when two conditions are jointly fulfilled: 1) a packing defect (including its complete absence) was apparent or known to the carrier at the time when he took over the goods and 2) the carrier did not make no reservations regarding the packing of the goods. A packaging defect is apparent if it can be detected when the packaging is examined with the reasonable care expected of the carrier in the particular case.

Reservations concerning defective packing do not have to be entered in the consignment note, nor do they have to be made in writing at all.

In domestic law, Article 72 (1) (2) TLA 1984 provides that the sender is liable for damage resulting from "the defective condition of the consignment, the absence or improper packing or the improper performance of loading operations".

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

In the case of apparent damage, Article 30 (1) CMR does not require a specific form for reservations. They may be made even orally, but in any case, it is the consignee who bears the burden of proving that reservations have been made. Reservations made by the consignee should not be limited to the words: "damage" or "loss", but should indicate the type of damage or loss, so that the carrier could promptly take steps to clarify the circumstances and causes of damage. It is assumed, however, that if the reservation is limited to indicating the fact of damage, but it announces more detailed indication of its character and such indication is later provided (e.g. in the form of photographs or a report), then the presumption of compliance of the condition of goods with the content of the consignment note does not apply.

In the case of non-apparent damage, written form is necessary. It seems that fax or sending a signed scan of a letter is sufficient, however there are no available court judgments concerning this issue.

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

Apparent damage is a damage that can be noticed with due diligence before receipt of the goods.

If a damage can be noticed only after the goods have been unpacked, it is considered to be a non-apparent damage. Prior to opening the vehicle, the consignee should examine the external condition of the vehicle. If the condition of the vehicle is not correct, the damage should be considered as apparent. The same refers to the conditions of the packing. The consignee should check with due diligence the condition of packing.

In containerized transport, the consignee is not required to inspect the content of the container at the time of receipt from the carrier. Hence, damage to goods transported in containers should be considered, as a rule, as non-apparent damage.

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

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

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)

Polish courts follow the regulation provided for in Article 31 CMR and recognise their jurisdiction when the parties have agreed on the jurisdiction of the Polish court, as well as in the situations indicated in Article 31 (1) (a) and (b) CMR. The Supreme Court in its judgment of 14 March 2019 (IV CSK 6/18), stated that the CMR Convention "contains special norms, excluding the application of the norms of internal law and international agreements to the issues regulated therein, including those relating to jurisdiction. Its scope applies to all disputes which arise out of carriage subject to the Convention, and the regulation is of a mandatory nature". The notion of " legal proceedings arising out of carriage under this Convention" is understood broadly and includes also claims that do not have their origin in the CMR but are connected with carriage subject to the CMR.

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	Article 32 CMR.	The Transport Law Act 1984 provides for a one-year period of limitation for claims asserted on the basis of the Law, except that claims for delay in carriage that did not cause a loss or damage to the consignment are subject to the statute of limitations after 2 months from the date of delivery of the consignment. Claims between carriers, as a general rule, are subject to the limitation period of six months from the date on which the carrier has compensated the damage or from the date on which an action has been brought against him.	In its judgment of 20 February 2018 (V CSK 205/17), the Supreme Court indicated that "The regulation of Article 32(2) CMR (...) does not contain any indication of the duration of the state of suspension of the limitation period for claims arising from carriage subject to the Convention, nor does it refer in this respect to the provisions of the law in force for the court recognizing the case (Article 32(3)). This leads to the conclusion that the state of suspension may last without time limitation". In the judgment of 7 March 2017 (II CSK 242/16), the Supreme Court indicated that "the limitation periods provided for in Article 32 CMR (...) apply to claims arising from a contract of international carriage of goods by road also when the provisions of the Convention do not regulate the consequences of non-performance/improper performance of obligations under such a contract and it is necessary to refer to the provisions of	n/a

			national law in order to assess such consequences".	

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	Article 31 (1) CMR, Article 33 CMR	c/a	No available case law.	The parties cannot by agreement award a court with exclusive competence when another court has a jurisdiction under the Article 32 (1) (a) or (b) CMR. This Article is of a mandatory nature. If a contract of carriage contains a clause conferring competence on an arbitration tribunal pursuant to Article 33 CMR, then court jurisdiction is excluded.

PART II (Chapter II, IV, VI)

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 term "persons of whose services the carrier makes use for the performance of the carriage" is understood broadly and includes, besides employees of the carrier, further carriers (both the first one with whom the carrier concludes a contract and subsequent ones), as well as employees of those carriers and their subcontractors. Moreover, this term includes, inter alia, those who load, unload and reload on behalf of the carrier, those who check the goods, those who carry out customs and administrative formalities, those who store the goods for the carrier in the period between its acceptance from the sender and its delivery to the consignee, etc. The circle of persons referred to in Article 3 CMR includes all further subcontractors and the persons they use, no matter how long the chain of further subcontractors might be.

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

The carrier is responsible for the acts or omissions of his agents, servants and other persons when they are acting "within the scope of their employment". This expression is understood broadly. The Court of Appeal of Warszawa in its judgement dated on 21 February 2013 (VI ACa 1095/12) stated: "The theft of goods by one of the persons mentioned in the cited provision [Article 3] is always an act «within the scope of their employment» (…), since it is precisely the custody of the goods during carriage and its delivery at the place of destination in an undamaged condition that are among the essential duties under the contract of carriage". The Court of Appeal in Bialystok in its judgement dated on 29 March 2018 (I AGa 52/18) indicated that: "The proving, by the carrier, that he was not at fault in the choice of the subcontractor shall not be sufficient to release him from liability.".

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 carrier is liable for total or partial loss of the goods as well as damages occurred between the moment of the takeover of the goods and the delivery. He is also liable when delivering with delay.

In Polish jurisprudence and literature it is not clear whether the carrier's liability regulated in Article 17 et seq. CMR is a liability based on fault or strict liability. However, the position seems to prevail, according to which the carrier may be required to exercise the utmost, but realistically achievable degree of diligence (e.g. judgment of the Court of Appeal in Warsaw of 7 November 1995 (I ACr 606/95)). There is no doubt that the carrier may release himself from liability only if the damage resulted from one of the exonerating causes listed in Article 17 CMR.

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	If the transported goods caused damage in any way to other transported goods (of other senders), the damage to those other goods is considered to be covered by the CMR.	Under domestic law, a carrier is not liable only if the partial or total loss of or damage to goods resulted from (1) reasons attributable to the consignor or the consignee, caused through no fault of the carrier, (2) from the properties of goods or (3) force majeure. Thus, if damage to the goods consigned for carriage by one consignor has caused damage to the goods of other consignors transported by the same conveyance, the carrier cannot escape liability. He may, however, claim compensation from the consignor whose goods have caused the damage.	No case law available.	n*/a*

8.5	YES	Trailers are considered vehicles thus the carrier is liable for damage caused by a defect or ill-use of the trailer. When the carrier has to pick up a trailer not belonging to him that is already loaded with the goods then the trailers can be considered to be part of the transported goods. Containers are considered to be part of the packaging.	There are no special regulations in domestic law concerning this issue. It seems that carrier is liable for damage caused by a defect or ill-use of the trailer. However, if the carrier has to pick up a trailer not belonging to him that is already loaded with the goods, then the trailers can be considered to be part of the transported goods. Containers are considered to be part of the packaging.	No case law available.	n*/a*
8.6	YES	n*/a*	n*/a*	Article 20. The Supreme Court indicated in the judgment of 26 November 2019 (IV CSK 415/18) that Article 20 CMR provides for the so-called legal fiction and not a rebuttable presumption. This means that in a situation where the goods have been found after the expiry of the time limit referred to in Article 20 (1) CMR, the carrier may not demand from the sender (consignee) to collect such goods. In such a situation, unless a demand as referred to in article 20 (2) CMR has been made, the carrier should deal	n*/a*

				with the goods in accordance with the rules defined in article 20 (4) CMR. Article 21. No case law available. Article 22. No case law available.	

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 carrier may be relieved of liability on the basis of the premise of "circumstances which the carrier could not avoid and the consequences of which he was unable to prevent" if he proves the cumulative occurrence of both features of the event listed in the provision of Article 17(2) CMR, i.e. 1) the inability to avoid the event itself and 2) the inability to prevent its consequences. The event must therefore be both unavoidable and overwhelming. Accordingly, a carrier who was able to avoid the event itself, although he was no longer able to prevent its consequences, cannot escape liability. Similarly, it is not possible to rely on the exemption when, although the carrier could not have avoided the event itself, he was able by his conduct to prevent the damage.

As already indicated above, the carrier is required to exercise the utmost diligence. This means that in order to relieve himself of liability, the carrier must prove the specific cause of the damage, which he could not avoid and the consequences of which he was unable to prevent, despite taking all measures (and not only reasonable, normally required or economically justified measures) possible with the exercise of the utmost diligence. This approach brings the liability of the carrier closer to objective liability.

The clause "circumstances which the carrier could not avoid and the consequences of which he was unable to prevent" is not equated with force majeure. Force majeure is an exonerating premise provided for in the Transport Law, which is applicable to domestic transport. In the jurisprudence, however, it is indicated that the formula adopted in CMR creates wider possibilities for the carrier to provide effective proof of exoneration than in domestic law (e.g. judgment of the Supreme Court of 17 November 1998 (III CKN 23/98), judgment of the Court of Appeal in Szczecin of 9 May 2013 (I ACa 111/13)).

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

The judicial case law does not give examples of the carrier invoking the special risks referred to in Article 17 (4) CMR. It is stressed that while the grounds for exemption under Article 17 (2) CMR must be proved by the carrier, with regard to the grounds under Article 17 (4) CMR it is sufficient to make them plausible, which follows from Article 18 (2) CMR (so the Court of Appeal in Kraków in its judgment of 22 November 2017 (I ACa 535/17)).

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	Transport Law Act 1984, which is applied to domestic carriages, states that "The amount of compensation for the total or partial loss of a consignment may not exceed the value, which is determined based on and in the following order: 1) the price indicated in the invoice of the consignor or the seller, or 2) the price arising from the price list applicable on the day of consignment, or 3) the value of goods of the same type and kind in the place and at the time of consignment" (Article 80 (1) TLA 1984).	Article 23 In a judgment of 19 June 2002 (II CKN 1003/00) the Supreme Court indicated that according to article 23 (1) CMR "compensation for total or partial loss of the goods shall be calculated d by reference to the value of the goods at the place and time at which they were accepted for carriage". The value of the goods in the case of carriage from the seller to the buyer is the sale price. This value means the value of the goods at the place of sale, identical to the place of	n/a

			Where the amount of compensation cannot be established as provided for in paragraph 1, the amount is established by an expert (Article 80 TLA 1984). In accordance with Article 81 TLA 1984 "1. If a consignment is damaged, compensation is established in the amount corresponding to percentage loss of its value. 2. The amount of compensation referred to in paragraph 1 may not exceed the value of compensation for: 1) the loss of the whole consignment, if its value dropped because of damage; 2) partial loss of the part of the consignment the value of which dropped because of the damage. Transport Law Act 1984 does not provide the limit of liability (as regulated in Article 23 (3) CMR).	acceptance of the goods for carriage. In a judgment of 14 February 2018 (V CSK 451/17) the Supreme Court indicated that the provision of Article 23 (1) CMR does not in any way indicate the currency in which compensation is to be determined. It only stems from this provision that what is relevant for determining the amount of compensation is the value of goods at the place and time of acceptance of goods for carriage. The issue of the currency of compensation - as it is not regulated in the CMR Convention - is therefore subject to the regulations of domestic law.	
10.2	NO	N*o case law available.*	n*/a*	N*o case law available.*	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)

The provision of Article 86 TLA 1984, applicable to domestic carriage, states that "Limits of compensation provided for in the Act do not apply if damage resulted from intentional fault or gross negligence of the carrier". The rule resulting from this provision also applies to carriages subject to the CMR. It is commonly accepted in the jurisprudence and literature that "such default on his part as (...) is as equivalent of wilful misconduct" is, in accordance with Polish law, gross negligence (e.g. judgment of the Court of Appeals in Białystok of 13 March 2006 (I ACa 48/06)).

In the judgment of 8 October 2020 (II CSK 773/18) the Supreme Court stated: "Gross negligence should be regarded as such a form of lack of diligence in predicting the consequences of an action, which violates elementary rules of conduct and duties incumbent on a given entity, bordering on intentionality. (...) The objective state of risk, the possibility of foreseeing the results of an act or omission, and the circumstances in which behaviour that could have prevented damage from occurring was omitted should be the subject of the findings and assessment. Gross negligence is not determined by the lack of utmost care. There is no gross negligence if there are no sufficient grounds to assume that the omitted actions would have prevented the damage".

The following conduct, among others, has been recognized in case law as constituting gross negligence: "delivery of goods by the carrier in an improper place and to an unauthorized person" (judgment of the Court of Appeal in Gdańsk of 17 April 2014 (V ACa 136/14)), knowingly carrying goods in too high temperature (judgment of the Court of Appeal in Szczecin of 3 September 2015 (I ACa 453/15)), carrying out instructions without requesting producing the first copy of the consignment note (judgment of the Court of Appeal in Warsaw of 12 February 2020 (VII AGa 868/19)) parking a car with goods of high value (known to the carrier) in an unguarded and poorly lit place (judgment of the Court of Appeal in Kraków of 8 November 2012 (I ACa 963/12)). However, the assessment of consequences of parking in unguarded parking lots is not uniform.

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	Ambiguity of case law[4]	Clarification

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

	carrier Yes/No		
Theft while driving	YES	Never	There is no case law on theft while driving. A malicious stop of the vehicle by armed assailants could be treated as a circumstance which the carrier could not avoid and the consequences of which he was unable to prevent. This position was taken by the Supreme Court in its judgment of 17 November 1998 (III CKN 23/98) stating: "The circumstances exempting the carrier listed in Article 17(2) CMR may also include robbery committed with the use of weapons or the threat of their use".
Theft during parking	YES	Never	Theft during parking is always considered avoidable in the sense of Article 17 (2) CMR. Consequently, the carrier is always liable. Parking in an unguarded, poorly lit, out-of-town location may be regarded as gross negligence. The assessment of such a situation depends on various circumstances: the carrier's awareness of the value of the goods, receiving instructions to park in guarded parking lots, the country in which the incident occurred, etc.
Theft during subcarriage (for example an unreliable subcarrier)	YES	Never	The carrier is responsible for the acts and omissions of the subcarrier as if such acts or omissions were his own (Article 3 CMR). In its judgment of 15 May 2015 Court of Appeal in Gdańsk (I ACa 14/15) stated "A carrier seeking a subcarrier is under an obligation to exercise the utmost care and caution in making his choice. This is because he bears his own liability both for the proper performance of the transport and for the safety of the goods entrusted to him, and by commissioning the execution of the contract to a subcontractor he assumes the risk of improper performance (or non-performance) of the obligation by an entity external to the contractual relationship between the parties".
Improper securing/lashing of the goods	YES	Never	It is assumed in the literature that securing the shipment for the time of carriage is the carrier's responsibility. This issue does not seem to be in doubt in the case law.
Improper loading or discharge of the goods	NO		In accordance with Article 17 (4) (c) CMR "(…) the carrier shall be relieved of liability when the loss or damage arises from (…) handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee". However, if these activities are done by the carrier, then he is liable in the case of loss or damage arises from them.
Temporary storage	YES	Never	In the light of Article 17 (1) CMR the carrier is liable also for loss or damage which takes place during temporary storage. The Supreme Court in its judgment of 29 September 2004 (II CK 24/04) emphasized that the carrier remains liable for "damages incurred during the time of the carriage, which includes not only the period of the actual transport of the goods, but the whole time when the goods remain in the carrier's custody".

Reload/transit	YES	Never	No case law available. In the light of Article 17 (1) CMR the carrier is liable also for loss or damage which takes place during reload/transit.
Traffic	YES	Never	No case law available.
Weather conditions	YES	Never	No case law available.
Overloading	YES	Never	No case law available.
Contamination during / after loading	YES	Never	No case law available.
Contamination during / after discharge	YES	Never	No case law available.

13. Successive carriage (art. 34 – 40)

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

The concept of successive carriage is relatively common in practice. The jurisprudence emphasizes that "The possibility of considering a given person as a successive carrier within the meaning of Article 34 CMR (...) depends exclusively on his acceptance of the goods and the consignment note; whether he was a party to the contract of carriage remains of no significance. Lack of certain elements of the consignment note does not prejudge its legal ineffectiveness." (judgment of the Supreme Court of 4 December 2015 (I CSK 1063/14)). It is also pointed out that "the CMR Convention does not contain a requirement that successive carriers joining the contract should make declarations of will to the consignor in this respect. The condition of successive carriage does not even require knowledge of the consignor as to the fact of entrusting the goods and the consignment note by the first carrier to the next carrier". (judgment of the Court of Appeal in Gdańsk of 23 February 2016 (I ACa 924/15)).

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

In its judgment of 11 September 2014 (I ACa 488/14), the Court of Appeals in Szczecin indicated that "A condition for a recourse claim between successive carriers is, in accordance with the first part of the provision of Article 37 CMR, payment of compensation by the carrier making the recourse claim".

In a judgment of 8 April 2009 (V CSK 392/08) the Supreme Court emphasized that "The scope of recourse claims regulated in Article 37 CMR and the criteria of settlements between carriers concern only successive carriers". Therefore, they may not be applied if the carriage was not of a successive carriage, and the contractual carrier commissioned a subcontractor to perform all or part of the carriage. The same position was taken by the Supreme Court in the judgment of 29 October 2008 (IV CSK 237/08).

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

The case law emphasizes "the need to distinguish between successive carriage and carriage in which the carrier concluding the contract of carriage uses a subcontractor who cannot be equated with the successive carrier" (judgment of the Supreme Court of 18 February 2016, II CSK 111/15). In the judgment of 4 August 2020 Court of Appeal in Kraków (I AGa 113/19) indicated that "successive carriage is performed in parts, which means that each successive carrier performs its part of the carriage". Therefore, it ruled out the existence of successive carriage in a situation where the carrier concluding the agreement with the consignor (the paper carrier) did not perform any part of the carriage.

14. E-CMR

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

Yes/No	E-Protocol	National law (civil law as well as public law)	Landmark cases	Clarification
YES	The E-Protocol was ratified by Poland on 23 April 2019 and entered into force on 11 September 2019.	The Transport Law A*ct* allows the consignment note for domestic transport to be issued in electronic form (Article 47 (3) TLA 1984).	No case law available.	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?

No case law available.