

## CMR – Country Report France

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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	<i>The convention est automatically applicable provided that the conditions mentionned on article 1 are met. A consignment note is not required.</i>	<i>The solution is the same under national law.</i>	CA Paris (France), 19 Nov. 2009, n°41973 : 06/20285 ; IDIT-CMR n°41972).	

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

Yes/No	Convention	National law	Landmark cases	Clarification
YES	<i>The parties may decide by a contractual clause to apply the convention to a domestic transport.</i>	<i>National French law is in this field not binding, thus the parties may decide to apply the CMR.</i>	Cass. com., 1 July 1997, Bull. civ. IV n°218 : Dalloz 1998 Jur. 143, Note B. Mercadal et F. Letacq ; BTL 1997.p.537 ; JCP 1997. IV. 1899, n°18950 ; RJDA 12/97, n°1489 - Versailles, 13 Dec. 2016, RG n° 16/07240 : IDIT n° 24462, BTL n° 3630, p.75	<i>Established case-law.  Courts stricly check the parties' consent to apply the convention.</i>

			CA Rouen 14 fév. 2008: IDIT n°22021	
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1.3 Is there anything practitioners should know about the exceptions of art. 1 sub 4?

Yes/No	Convention	National law	Landmark cases	Clarification
<b>NO</b>	Possible to apply voluntarily the convention to a removal contract provided that public policy provisions are complied.	<i>idem</i>	TGI Toulouse, 20 June 2002: BTL 2002 p.488, IDIT n°12437	This decision considers the clause as void under French consumer law given that consignee was a private individual. There is no other case-law on these exclusions in France.

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
<input checked="" type="checkbox"/>	<b>Freight forwarding agreement</b>	Specific legislation exist governing "contrats de commission de transport" : - Contrat type commission de transport (Décret n° 2013-293 du 5 avril 2013 et publié au Journal Officiel du 7 avril 2013) - Art. L 132-3 à L 132-9 Commercial code. The CMR is indirectly applicable as the commissionnaire is liable law	Cass. com., 18 Sept. 2007, Bull. civ. IV n°205 ; RTD n°10, nov. 2007, comm. 22, Ph. Delebecque ; JCP 2007 IV 2900 p.44 ; BTL 2007 p. 58, obs M.Tilche n°3192 p. 579 ; Recueil Dalloz, 11 Oct. 2007 p.2468 ; Revue Scapel 2008 p.19 et p.58, IDIT-CMR n°41334	Freight forwarding agreements ("contrats de commission") are not governed by the CMR but by the domestic law applicable to the agreement determined according to conflict of law rules.

		<i>under the same conditions that as carrier whose contrat is governed by the convention.</i>		
<input checked="" type="checkbox"/>	<b>Physical distribution</b>	<i>Same solution, domestic transport law not applicable to logistic services.</i>	<i>Cass. com. 22 Jan. 2008: BTL 2008 n°3209 p.76, IDIT n°22994</i>	<i>CMR not applicable as transport of goods represented a minor proportion of the different services provided in the agreement. On the contrary if the moving of goods is substantial, the CMR will govern the whole contract.</i>
<input type="checkbox"/>	<b>Charters</b>	<i>Rental of vehicle with driver or not is governed by specific rules.</i>	<i>Trib. Com. Lyon, 18 May 2004: BTL 2004 p.448, obs. M. Tilche</i>	<i>Thus the CMR is not applicable.</i>
<input type="checkbox"/>	<b>Towage</b>	<i>CMR not applicable</i>		
<input checked="" type="checkbox"/>	<b>Roll on/roll off</b>	<i>The CMR is applicable except when the damage was caused exclusively by the maritime carrier. The road carrier's liability is thus governed by the mandatory provisions of the applicable maritime law. Thus the CMR is applicable only if a unique contract of carriage has been concluded.</i>	<i>Cass. com. (France), 27 June 2006: IDIT-CMR n°41928). CA Aix, 30 May 1991, Scapel 1991 p. 105; Droit Maritime Français 1992 p. 194; BTL 1992 p. 281, IDIT n°10529. Cass. com. 5 July 1988, JCP 1988 p. IV. 330; ETL 1990 p. 221; BT 1989. p.449; RDU 1998. II. p. 741, IDIT n°7231. (Cass. com. (France), 21 Nov. 1995, n°93-19029 : BTL 1995, p.831 ; Bull. civ. IV n°248 ; RDU 1996, p.595 ; IDIT-CMR n°41931).</i>	<i>Application of the CMR.  The carrier's liability is determined by the mandatory provisions of the maritime law.  The CMR remains applicable to a Ro/Ro carriage as the vehicle was placed on deck with consent of the shipper, thus excluding the Brussels convention even if existed a Paramount clause.</i>

<input checked="" type="checkbox"/>	<b>Multimodal transport</b>	<i>The CMR is not applicable as the transport is organised through several carriage contracts. The road leg is governed by the CMR if it complies with the conditions of article 1, especially if it is international.</i>	<i>CA Colmar, 29 May 2013, IDIT n° 23969.</i>	
<input checked="" type="checkbox"/>	<b>Substitute carriage<sup>1</sup></b>	The carrier is responsible for the acts of the substitute carrier.	<i>Cass. com. (France), 9 July 1996 Bull. civ. IV n°217 : JCP 1996.IV.2116 ; DMF 1996, p.1147 ; RJDA 1996, p.1472 ; IDIT-CMR n°19328).</i>	The extent of liability is governed by the law applicable to the substitute carriage.
<input checked="" type="checkbox"/>	<b>Successive carriage<sup>2</sup></b>	<i>Successive carriage is governed by article 34 to 40 CMR.</i>	<i>Cass. com. (France), 9 July 1996 : Bull. civ. IV n°217 : JCP 1996.IV.2116 ; DMF 1996, p.1147 ; RJDA 1996, p.1472 ; IDIT-CMR n°19328.)</i>	<i>French case-law apply cumulatively article 3 and 36 CMR.</i>
<input checked="" type="checkbox"/>	<b>'Paper carriers'<sup>3</sup></b>	<i>two solutions: - the paper carrier is characterized as a "commissionnaire" and thus not submitted to the CMR (see above "freight forwarding agent") - the paper carrier is characterized as a main carrier substituting the carriage (see above "successive carriage")</i>	<i>Cass. com., 10 May 2005, IDIT n°22178, Bull. civ. IV n°101; BTL 2005 n°3083, p.371.</i>	<i>NO the characterization depends on the consent the principal to authorize or not the substitution.</i>

<sup>1</sup> partly art. 3

<sup>2</sup> 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

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

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	<i>Yes but the contact is not void without consignment note</i>	<i>idem : Ruling n°9 Nov. 1999, mod. 2017.</i>	<i>CA Paris, 30 June 2004 : BTL 2004, n°3045, p.536, IDIT-CMR n°22021</i>	<i>The CMR is applicable in the absence of an international consignment note</i>
2.2	YES	<i>We supposed that this question concerned the evidential weight of the CN?? The CMR consignment note only evidences of its content until proven otherwise.</i>	<i>idem</i>	<i>Cass. com, 1 Dec. 1992: IDIT n°19074</i>	
2.3	YES	<i>Yes provided that he did not make reservations on taking over the goods</i>	<i>idem</i>	<i>CA Rouen, 13 Nov. 1997: IDIT-CMR n°19158</i>	

2.4	NO	<i>In the absence of reservations there is a presumption of good condition, proof of the contrary admissible (cf. art. 9§2). If reservations exist, proof to the contrary is nevertheless admissible except if the sender expressly agreed them.</i>	<i>idem</i>	<i>Cass. com., 12 Oct. 1981: IDIT-CMR n°19187.</i>	
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### 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	<i>The carrier is liable for the penalties due to improper execution of customs formalities as he had been mandated.</i>	<i>idem</i>	(CA Paris (France), 23 Sept. 1981 : BT 1981, p.538 ; IDIT-CMR n°19139).	<i>Except if expressly mandated, the carrier is not liable for customs formalities (Nîmes, 16 May 2012, RG n° 10-05135, base IDIT n° 23784, BTL, n° 3417, p.395).</i>
3.2	YES	<i>See under art. 23</i>			
3.3	YES	<i>he is liable under art.11§3</i>	<i>idem</i>		

3.4	YES	he is liable under art.11§3 (see above 3.1)	idem	Cass. Com., 10 June 1976, n° 75-11352: IDIT-CMR n° 19143; BT, 1976, p.402.	
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#### 4. The right of disposal (art. 12)

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

The consignor can execute his right of disposal provided that he writes precise instructions for the carrier on the first copy of the consignment note and provides for an indemnity for the carrier against all expenses, loss and damage involved in carrying out such instructions.

Cass. Com. (France), 29 Oct. 1990, n°87-18068 : BTL 1991, p.190 ; IDIT n°19153 : the consignor is entitled to ask for the stop of the transport

This right shall cease to exist when the second copy of the consignment note is handed to the consignee or when the consignee exercises his right under article 13, paragraph 1; from that time onwards the carrier shall obey the orders of the consignee.

The consignee benefits from this right when the second copy of the consignment note is handed to him or when he his right under article 13, paragraph 1, or if the sender had made a special provision in the consignment note.

##### 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)?*

In case of modification of the place of delivery, the carrier is liable if he does not require the first copy of the consignment note.

If the consignee asks for a modification of the place of delivery, he must give to the carrier the first copy of the consignment note (art. 14§5). He may be liable if he fails to do so. The court must however check if the did carrier not comply with the instructions of the freight forwarder (Cass. Com., 29 Oct. 1985, n°84-15411 : IDIT-CMR n° 19095).

Regarding the specifications of the consignment note and the delivery order, the carrier cannot ignore that following instructions from a person who was not the shipper, without informing him, constitutes gross negligence (CA Bordeaux (France), 7 Sept. 2011 : BTL 2011, n° 3380, p.541 ; IDIT-CMR n°23629).

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	CMR article 14		CA Orléans (France), 12 Nov. 1996 : BTL 1997, p.159 ; IDIT-CMR n°19192.	When he was taking the goods in charge the carrier could reasonably think that he would arrive after the strike. A strike only constitutes a temporary prevention to the transport.
5.2	YES	CMR article 15		CA Montpellier (France), 8 Jan. 1987 : BTL 1987, p.589 ; IDIT-CMR n°3318.	If the carrier does not ask for instructions within a reasonably short time he is liable.

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 10 CMR	General standard road contract (Decree n° 2017-461, 31 March 2017: JORF n°0079 du 2 April 2017 (Art. 22.5).	Cass. com., 26 Feb. 1980 : BTL 1980, p. 200 : <i>the transport contract of an empty container is a contract of carriage of goods</i>	When the container provided by the shipper is full it is considered as part of the goods. As a consequence, his weight is taken into account for the calculation of the indemnity if damaged.

				<p>When the container only has been damaged, old cases have considered that it could not be characterized as goods. As a consequence, the compensation is governed by the applicable law. When the French law is applicable to the international contract of carriage by road, since 2017, the General standard road contract (Decree n° 2017-461, 31 March 2017: JORF n°0079 du 2 April 2017) provides for a specific limitation of indemnity for containers : 2875 euros. In the absence of case law, we cannot assert that this decree would be applicable to a CMR case.</p>
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### *6.2. To what extent Is the consignor liable for faulty packaging? (art. 10)*

The sender is liable to the carrier for damage to persons, equipment or other goods, and for any expenses due to defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

The carrier may avoid liability or sue the consignor if he entered precise and motivated reservations in the consignment note (CA Rouen (France), 8 January 1998 ; IDIT-CMR n°19157 - CA Lyon (France), 21 February 1992 ; BTL 1992, p.166 ; IDIT-CMR n° 9154)

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

A notification of damage has to be precise and motivated and notified to the carrier.

Examples of correctly motivated reservations :

Reservations mentioned on the consignment note specifying the existence of the damage et precisng that the tarpaulin was torn, the electronic cards and the slides were wet. Such reservations are sufficient and therefore there is no need for a thorough examination as damages were immediately detectable.

CA Toulouse (France), 12 April 1994: BTL 1994, p.714 ; IDIT-CMR n°19267.

Example of insufficient reservations :

Reservations mentioning that « the goods have been received subject to defects and missings due to the theft » are too general as they do not precise the nature and the number of missing parts. CA Versailles (France), 13 May 2004 : IDIT n°2026.

The specification of an external specific material damage does not constitute appropriate reservations specified in article 30. CA Paris (France), 12 juin 1996 : IDIT-CMR n°1425.

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

Non apparent damages are damages that cannot be noticed through a general external checking of the goods and can only be detected after disassembly or unpacking of the goods

CA Versailles (France), 22 Jan. 2004 : IDIT-CMR n°22138 – CA Paris (France), 24 Jan. 2001 : BTL 2001, p.192 ; IDIT-CMR n°18496.

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

When reservations do not comply with the prescriptions of article 30.1, the consignee is presumed to have received the goods in the condition described in the consignment note. He may however provide evidence to the contrary by demonstrating that a damage existed at the moment of delivery and that such damage was linked to the carriage.

CA Orléans (France), 30 Sept. 1999 : IDIT-CMR n°19242.

## 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)

Article 31 : French courts consider they are competent :

-when one of the forums provided in article 31.1 is located in France, including “the place where the goods were taken over by the carrier” even if such forum does not exist in the French procedure law (Cass. com. (France), 20 Dec. 2000, n°98-15546 : Bull. civ. I n°342 ; BTL 2001, p.54 ; DET 2001, p.237 ; Gaz. Pal. 08/09 juin 2001, p.32 ; IDIT-CMR n°16269).

-when France or a French court is designated by a jurisdiction clause

Article 33 : Arbitration clauses are valid provided that they provide for the application of the CMR (CA Aix-en-Provence (France), 2 Septembre 2004 : BTL 2004, p.614. ; JCP E 2005.1930, obs. C. Legros. ; IDIT-CMR n°21998).

### 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 : scope of application		Cass. com. (France), 16 Feb. 1970, n°68-13357 : Bull. Civ. IV n°62 ; BTL 1970, p.144 - Cass. com. (France), 16 June 2009, n°08-12593 : BTL 2009, n°3278, p.417 ; IDIT-CMR n°23192	The CMR convention does not govern a freight forwarding contract. As a consequence article 32 is not applicable.

### 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 32 : scope of application		Cass. com. (France), 25 June 1991, n°90-10829 : Bull. civ. IV n°243 ; LIAISONS JURIDIQUES ET FISCALES, 12 juillet 1991, p.2 ; IDIT-CMR n°18967	The CMR governs recursive actions and actions for payment

			Cass. com. (France), 24 March 2004, n°02-16573 : Bull. civ. IV n°63 ; JCP G 2004.II.10078, note Ph. Delebecque ; BTL 2004, p.246 ; RJDA 2004/8-9, n°977s	
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## 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 carrier is responsible for the acts and omissions of the substituted carriers (Cass. com., 9 July 1996, n°94-1752; Bull. civ. IV 1996 p. 217; JCP 1996 IV 2116; DMF 1996 p.1147; RJDA 1996 p.1472 ; IDIT-CMR n°19328) and of his agents and servants, such as the driver responsible for a defective stowage ((CA Rouen, 2e ch., 13 Jan. 2005: IDIT-CMR n°22116), or a driver involved in a drug traffic (CA Paris, 6 Apr. 1981: BT 1981 p.567; IDIT-CMR n°19382).

More generally, the carrier is liable for all his substitutes, that is all service providers hired by him to perform one of his duties, such as subcontractor carriers, stevedores, handling agents, customs brokers.

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

He is liable under the same conditions as the latter. He may take advantage of their exemption cases and liability limits, totally or partially. as a consequence, the carrier is liable in the same proportion for their faults that may increase their liability beyond the limits ((T. com. Paris, 1st ch., 12 mai 2003 : IDIT-CMR n°22153 - CA Paris, 4 July 1984: BT 1985 p.158 ; IDIT-CMR n°19337).

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.

The carrier will nevertheless be relieved from his liability by two categories of exoneration causes : general causes (art. 17 par. 2) and special risks (art. 17 par. 4). The originality of the system relies here is the burden of the proof concerning the special risks: the carrier is relieved when he establishes that the damage results from one of these risks (art. 18 par.2). The burden of the proof is then reverses as the claimant will have to prove that the damage was not caused by this event.

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 damages are caused to goods by other goods, the latter are compensated according to the provisions of the CMR. If the goods have been consolidated, such damage could be considered as an inevitable circumstance under article 17 par.2.	<i>idem</i>	CA Poitiers (France), 21 Nov. 1972: BTL 1973, p.21 ; IDIT-CMR n°19533.	the sender of goods affected by its own defect not only cannot obtain compensation for the damage resulting therefrom to this merchandise during transport, but also bears the liability for the damage caused thereby to other merchandise forming part of the cargo.
8.5	YES	<i>The carrier is liable even if the damages have been caused by the vehicule whether the</i>		CA Rennes (France), 6 May 2015, n°13/04548 : IDIT-CMR n°24229.	The international carrier unsuccessfully invokes the application of Article 17-2 of the CMR to exempt itself from

		<p><i>vehicule is his or rented, or driven by one of his attendants.</i></p> <p><i>there is no case law in France under the CMR on the status of containers (packing or vehicule)</i></p>	<p><i>There are French case law on this subject:</i></p> <ul style="list-style-type: none"> <li>- <i>if the goods have been stuffed by the shipper before handing over of a sealed container to the carrier, the container is considered as a package</i></li> <li>- <i>if not, it is considered as part of the vehicule (usual situation)</i></li> </ul>	<p><i>Cass. com. (France), 22 Feb. 1994, n°92-10706 : BTL 1994, p.263 ; IDIT-CMR n°19618.</i></p>	<p><i>damage to the goods as a result of the fire in the trailer. In fact, the expert opinion having concluded that there was a fire caused by the heating of an axle following an oil leak, the transporter cannot, in application of article 17-3 of the CMR, plead the defects of the vehicle for exoneration.</i></p> <p><i>The use of a semi-trailer truck with 25 tons of payload instead of a smaller vehicle with appropriate equipment for transporting masters' paintings prohibits the carrier from exoneration.</i></p>
8.6	YES	<p><i>CMR article 20 - case law very rare</i></p> <p><i>article 21: the carrier is liable provided that he has collected a payment and paid back the shipper. few cases involving payment by bills of exchange.</i></p>		<p><i>Paris Court of Appeal, 9 April 2009 : BTL 2009, p.307 : IDIT n°25038 (n°CMR ?).</i></p> <p><i>Aix-en-Provence Court of Appeal, 2 March 1979 : BTL 1979, p.342 ; IDIT-CMR n°19232.</i></p> <p><i>Grenoble Court of Appeal, 17 Jan. 2012 : BTL 2012, n°3399, p.97 ; IDIT-CMR n°41486.</i></p>	<p><i>presumption of loss when goods undelivered after a certain period of time.</i></p> <p><i>The handwritten "against documents" on the consignment note is not equivalent to a "cash on delivery" provision.</i></p> <p><i>If the carrier does not prove that he had previously paid back the shipper, he has no action against the consignee.</i></p>

				Cass. com., 1st Feb. 2000, n°97-18.497 : IDIT-CMR n°41339.	If the carrier accepts a bill of exchange on behalf of the shipper, the shipper cannot be refunded unless he proves that the bill was unpaid.
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## 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)

French case law rarely admit such circumstances. There is a tendency to appreciate these circumstances according to the French conditions of 'force majeure', requiring to admit inability to prevent the damage, the demonstration of 'unpredictability' (Cass. com. (France), 16 May 2006, n°04-12952 ; BTL 2006, n°3134, p. 401 ; IDIT-CMR n°22388). The rare decisions admitting the exemption of the carrier's liability concern robbery with assault of the driver (Cass. com. (France), 30 June 2004, n°03-13091 ; BTL 2004, n°3043, p.505 ; IDIT-CMR n°21927). Another case admits the exemption for a traffic accident caused by another vehicle: CA Caen (France), 13 Nov. 2014, n°13/00248 ; BTL 2014, n°3530, p.717 ; IDIT n°24177.

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

See under question 12.

## 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
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10.1	YES	<p>CMR only grants compensation for material damages causes to the goods transported.</p> <p>Art. 23§1 and 2: compensation calculated by reference to the value of the goods at the time and time at which they were accepted for carriage.</p> <p>Art. 23§2: determination of the value of the goods</p> <p>Art. 23§3 and 4 : Limitation of compensation and additional charges</p> <p>Art. 23§3 : Limitation of compensation - taking into account the full weight of the damaged goods</p>	<p>Under French law all elements of damage are compensable : material and financial, commercial, moral...</p>	<p>CA Lyon, 22 June 2012, n°11/01828, Axa France c/Pregis et al. applying strictly the CMR.</p> <p>Cass. Com., 12 March 2013, n°09-12854</p> <p>Cass. com. (France), 8 Feb. 1982, n°81-10568 : RTD com. 1983, p.128 ; ETL 1983, p.43 ; IDIT-CMR n°41313</p> <p>Cass. com. (France), 5 Oct. 2010, n° 09-10837 : BTL 2010, n°3337, p.607 ; RJDA 3/11, p.234 ; IDIT-CMR n°23397</p> <p>CA Paris (France), 8 Nov. 2000 : BTL 2001, p.17 ; IDIT-CMR n°974</p>	<p>Compensation for material damages only.</p> <p>The value of the goods taken into account is that resulting from the sales invoice established by the shipper and not the price paid to acquire the goods transported, it follows that it is the selling price of the goods at the place of their delivery and at the time of this which is taken into consideration.</p> <p>The current market price cannot be understood as the intrinsic value of the commodity and in particular its cost of manufacture ☐ replacement price.</p> <p>Excise duties on tobacco are added to the initial value of the goods. In the event of theft, and in the context of international transport, the compensation due by the carrier may not exceed the</p>
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					<p>limits of the guarantee provided for by the CMR. No compensation under §4.</p> <p>In the event of a machine which has never been usefully delivered to its recipient because of damage resulting from transport, it is the total weight of the material transported which must be taken into account for the calculation of the limitation of indemnity.</p>
<b>10.2</b>	YES	Higher compensation may only be claimed where the value of the goods or a special interest in delivery has been declared in accordance with articles 24 and 26.		<p>Cass. com. (France), 11 Jan. 1994 : <i>IDIT-CMR n°19426</i>, BTL 1995, p.620</p> <p><i>Cass. com. (France), 4 May 2017, n°15-18337 et 15-22775.</i></p>	French Courts however have admitted a higher compensation in other cases than those provided for by the text. For example, when special clauses in the appendix to the insurance policy provided for compensation beyond these limits.

## 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)

Before French Courts, the limits can be broken through when the carrier has committed a willful misconduct (the specific term is 'dol' in the French version of the CMR) or an inexcusable default. The "inexcusable fault" of the carrier (or of the freight forwarder) replaced, since a law of December 8, 2009, in article L. 133-8 of the Commercial Code, gross negligence as a ground for exclusion from the limitation of liability.

Article L.133-8 of the French Commercial code gives a definition of such fault: "a fault implying awareness of the probability of the damage and its reckless acceptance without valid reason". The inexcusable fault implies recklessness (that is to say the knowledge of the risky situation by the carrier) and requires that one establishes deliberate risk taking. Thus, proving an inexcusable fault is more difficult than proving gross negligence. Recent case law is then quite favorable for the carrier. The first case admitting an inexcusable fault (Cass. com. (France), 21 Nov. 2018, n°17-17.468 : Dalloz actu., 041218 obs. X. Delpech) concerned a truck parked at night, on an isolated site in the countryside, even regularly occupied by vehicles from a transport company, directly on the public road, without any effective surveillance, as the goods were contained in an unladen trailer.

*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?*

In our view the notion of inexcusable fault must be construed objectively as in air case law (Cass. Com. 2 Oct. 2007, n°05-1909 : IDIT n°22919) : it must be shown that the carrier should have been aware of the probable nature of the damage. However there is no case precising such way of interpretation in road transport.

## 12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law <sup>4</sup>	Clarification
Theft while driving	YES	Sometimes	<i>French cases sometimes exempt carriers from liability, depending on the circumstances of the theft. Maneuvers forcing the truck to park. Exemption from liability (Cass. com. (France), 21 June 1988, n°86-17846 : BTL 1988, p.437 ; ULR 1988-II, p.739 ; IDIT-CMR n°19566).</i>

<sup>4</sup> Please indicate to what extent the case law in your country is in line, or whether case law differs from judgement to judgement.

<b>Theft during parking</b>	YES	Sometimes	<i>Exemption (yes).</i> Theft during parking - area not isolated and <i>lightened</i> - driver remained in the cabin. Exemption from liability (Cass. com. (France), 10 March 2015, n°13-25677 et 14-15802 ; BTL 2015, n°3543, p.171 ; IDIT n°24313). <i>Carrier exemption (no).</i> The driver could stop in the guarded areas of Bari or Naples while respecting the rules of conduct, the only circumstance that these stops could disturb the functioning of the company, is unsuitable in itself to make the event inevitable. Because the carrier knew the risks of thefts in Italy (Cass. com. (France), 2 June 2004, n°02-20846 : BTL 2004, n°3039, p.427; JCP 2004.IV.2555 ; IDIT-CMR n° 21897).
<b>Theft during subcarriage (for example an unreliable subcarrier)</b>	NO	Sometimes	<i>same solutions as when the transport has not been subcontracted (liability, limits and breaking of the limits).</i> <i>The principal carrier may however be considered as liable when subcontracting carelessly with an unreliable carrier : chartering on a freight exchange from an unknown carrier who hijacked the goods - inexcusable fault – fraud (CA Lyon (France), 7 Dec. 2017, n°14/09583 : BTL 2018, n°3673, p.12).</i>
<b>Improper securing/lashing of the goods</b>	YES	Sometimes	Even if the sender had loaded himself the marble slabs on the vehicle, the carrier cannot invoke the particular risk resulting from the incorrect loading (article 17-4-c of the CMR) to exempt himself from the presumption of liability, as soon as he himself had carried out the stowage operations - wedging of the goods, from which the damage resulted (CA Metz (France), 17 Jan. 2013, n°09/02739 : BTL 2013, n°3449, p.144 ; IDIT n°23948).
<b>Improper loading or discharge of the goods</b>	YES		Failure by the transporter to comply with his obligation to control the loading - absence of loading reservations (CA Rouen (France), 25 Nov. 2004, n°02/03050 : IDIT-CMR n°22131).
<b>Temporary storage</b>	YES	Rarely	Temporary storage is incidental to the transport operation and is therefore governed by <i>transport law</i> . About a theft in an unbounding warehouse (CA Versailles (France), 7 Jan. 2010, n°08-07825 : <i>JurisData</i> n°2010-000371 ; IDIT n°24802).
<b>Reload/transit</b>	YES	Never	<i>Liability of the carrier in case of reloading (CA Paris (France), 18 May 2000 : IDIT-CMR n°476).</i>
<b>Traffic</b>	YES	Sometimes	<i>Depending on the circumstances.</i> Traffic accident - Tipping of the truck in a bend - Damage to a large part of the goods - Failure to strap the containers inside the vehicle - Partial exemption of the carrier due to defective securing by the shipper (CA Versailles (France), 27 Oct.2005 : <i>RJDA</i> 2006/5, n°530, p.474 ; IDIT-CMR n°22504).
<b>Weather conditions</b>	YES	Rarely	Depending on the circumstances. Accident to the transporter vehicle following a snowstorm in Turkey in December - circumstances which the carrier could not avoid and the consequences of

			which he was unable to prevent (no) (CA Bordeaux (France), 13 July 1982 : BTL 1983, p.542 ; IDIT-CMR n°19591).
<b>Overloading</b>	YES	Sometimes	The carrier cannot be relieved of his responsibility, in application of article 17-4 c of the CMR (specific risk specific related to loading), insofar as it was his responsibility to ensure that there is no overload to avoid the sinister (CA Toulouse (France), 17 Feb. 2016, n°14/00714 : BTL 2016, n°3587, p.143 ; IDIT-CMR n°24344.
<b>Contamination during / after loading</b>	NO	Never	
<b>Contamination during / after discharge</b>	NO	Never	

### 13. Successive carriage (art. 34 – 40)

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

A successive road carrier is liable when he has taken over the goods from a previous carrier and has accepted the consignment note. He is liable for the leg of the transport he performed during which the damage occurred. His responsibility is engaged with regards to his principal, but also regarding the consignee and the shipper (art. 36). (Cass. com. (France), 9 July 1996, n°94-17527 : Bull. Civ. IV n°217 ; JCP 1996.IV.2116 ; DMF 1996, p.1147, obs. R. ACHARD ; RJDA 1996, p.1472 ; IDIT-CMR n°19328).

When a carriage is performed by several successive carriers, Chapter VI of the CMR is applicable only if each carrier has accepted the same unique consignment note (Cass. com. (France), 12 May 1987, n°85-17168: Bull. 1987 N°116; BT 1987, p 399 ; Gaz. Pal. 1987, pano, p.30 ; JCP 1987. IV. 245 ; IDIT-CMR n°18978).

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

Each carrier is liable for his own misperformance of the contract. If the principal carrier caused himself part of the damage, he is jointly and severally liable for the whole loss with regards to the shipper. He will be guaranteed by the successive carrier up the latter's share of the loss. If he did not cause the damage, he will be fully guaranteed by the successive carrier.

CA Paris (France), 21 Jan. 2015, n°11/16706 : BTL 2015, n°3537, p.78 ; IDIT-CMR(FR) n°42309 ; IDIT-CMR(EN) n°42310).

franc Cour de cassation requires the proof that the successive carrier contributed to the damage. In this case, the sued carrier has a right of recourse against him (Cass. com. (France), 17 May 2011, n°09-70500 : IDIT-CMR n°23559).

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

Theoretically, the regime is different. But French courts frequently misunderstand the two concepts of substitute and successive carrier.

- Successive carriage covered by Chapter VI implies that each carrier performs part of the journey while accepting the same carriage contract (consignment note).

- A substitute carrier is not part of the initial contract of carriage. He acts as a subcontractor of the initial carrier and issues his own consignment note.

As a consequence, when a substitute carrier performs a contract in France, the CMR is not applicable and the contract is governed by French law (CA Paris (France), 28 June 1990, : BT 1991, p.83 ; IDIT-CMR n°19869).

## 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	France did not sign the protocol (which was originally signed only by 8 countries). She however joined the protocol on October, 5 <sup>th</sup> 2013. It was published by Decree of 3 January 2017	The e-protocol entered into force in France on January, 5 <sup>th</sup> , 2017. A ministerial decree of 6 Dec. 2017 modified the previous provisions on transport documents to precise that the consignment note can now be issued digitally and transmitted by, telephone, tablet or computer. the first carriage between Spain and France using a e-consignment note was performed on 19 January 2017, only a few days after the entry into force of the protocol.	No cases so far	

	(Decree n°2017-1 ; JORF 4 Jan. 2017).			
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*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?*

As the protocol entered into force only in 2017, there is no case law so far.

As for doctrine, see the developments of Frédéric Letacq in the book : CMR Book, Sticking publishing, to be published in 2021 (Chapter 6 on the e-CMR protocol).