

Annex VI - Description of the liability regime of the CIM – Appendix B to COTIF¹

Scope of CIM

Title III of Appendix B to the COTIF (hereinafter: 'CIM') contains the "uniform rules" concerning the contract of international carriage of goods by rail. The CIM uniform rules apply to contracts of international carriage of goods by rail. More specifically, the scope of the CIM holds every contract of carriage of goods by rail for reward² when the place of taking over of the goods and the place designated for delivery are situated in two different Member States to the Convention, irrespective of the place of business and the nationality of the parties to the contract of carriage.

CIM applies also to contracts of carriage of goods by rail for reward, when the place of taking over of the goods and the place designated for delivery are situated in two different states, of which at least one is a member state and the parties to the contract agree that the contract is subject to the uniform rules.

Other types of contract relating to the carriage of goods, such as, for example, transport commission contracts, charter contracts, the hiring of means of transport, etc., are not regulated by the CIM. The application of the CIM depends, ultimately, on the type of contract chosen in a particular case. The consignment note serves as a means of proof.³

The uniform rules do not apply to carriage performed between stations situated on the territory of neighbouring states, when the infrastructure of these stations is managed by one or more IMs subject to only one of those States.

Any State which is a party to a convention concerning international carriage of goods by rail comparable with the CIM may, when it makes an application for accession to the Convention, declare that it will apply the CIM only to carriage performed on part of the railway infrastructure situated on its territory. This part of the railway infrastructure must be precisely defined and connected to the railway

¹ For a complete analysis of the CIM uniform rules, see M. Clarke, "Legislative comment: International carriage of goods by rail: CIM 1999 in Force", (2007) *Journal of Business Law*, 213-218.

² Consequently, according to the explanatory report, the CIM is not obligatorily applicable to the free transportation of rescue goods.

³ According to the explanatory report, the contract of international carriage of goods by rail is a consensual contract, with the consignment note being only a documentary proof, after the example of the CMR consignment note. The contract is concluded with the railway, as the carrier, irrespective of the railway infrastructure used. Moreover, the consignment note is also a customs document within the framework of the Community/Common Dispatch/Transit Procedure (EC EFTA). Under article 15, § 3 of the CIM, the carrier shall be liable for any consequences arising from the loss or misuse of the documents referred to in the consignment note and accompanying it or deposited with the carrier, unless the loss of the documents or the loss or damage caused by the misuse of the documents has been caused by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

infrastructure of a Member State. When a State has made the above-mentioned declaration, the CIM will apply only on the condition

- a) that the place of taking over of the goods or the place designated for delivery, as well as the route designated in the contract of carriage, is situated on the specified infrastructure, or
- b) that the specified infrastructure connects the infrastructure of two Member States and that it has been designated in the contract of carriage as a route for transit carriage.

Liability regime (Title III)

Article 23 of the CIM stipulates that the carrier (the contractual RU with whom the consignor has concluded the carriage contract) will be liable for loss or damage resulting from the total or partial loss of, or damage to, the goods. This constitutes an **objective/strict liability** whereby no fault has to be proven and which would be triggered, according to the explanatory report even if the damage is actually due to the IM.⁴ The damage has to occur between the time of taking over of the goods and the time of delivery and for the loss or damage resulting from the transit period being exceeded, whatever the railway infrastructure used. The criterion is thus not the movement of the goods but the custody and control.⁵

Still according to article 23 of the CIM, the carrier will be **relieved** of this liability to the extent that⁶ the loss or damage or the exceeding of the transit period was caused by the fault of the person entitled, by an order given by the person entitled other than as a result of the fault of the carrier, by an inherent defect in the goods (decay, wastage etc.), or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. The burden of proof lies on the carrier. To the extent that the loss or damage arises from the "special risks" inherent in some specific circumstances, the carrier will be relieved from his liability as well. When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the "special risks" referred, it will be presumed that it did so arise. The person entitled will, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the goods with the consignment note, will become a party to the contract of carriage in accordance with the terms of that document and will assume the obligations arising there

⁴ See also M. Clarke, "Legislative comment: International carriage of goods by rail: CIM 1999 in Force", (2007) *Journal of Business Law*, 217.

⁵ Putzeys, *Droit des Transports et Droit Maritime* (Brussels, 1993).

⁶ According to the explanatory report, the words "to the extent that" imply a *pro rata* liability of the carrier when damages have been caused partly by circumstances for which the carrier is answerable and partly by circumstances for which he is not answerable.

from (Article 26). In such a case each carrier will be responsible in respect of carriage over the entire route up to delivery. Their liabilities will be joint and several.

The carrier will also be liable in respect of the entire carriage, under article 27 of the CIM, where he has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, whether or not in pursuance of the right to do so under the contract of carriage.

Under article 30 of the CIM, in case of total or partial loss of the goods, the carrier must pay compensation, to the exclusion of all other damages. In such a case, compensation will not exceed 17 units of accounts per kilogramme of gross mass short in case of a loss.⁷ According to article 32, in case of damage to goods, the carrier must pay compensation equivalent to the loss in value of the goods, to the exclusion of all other damages. Some limitations to the liability are provided.

If loss or damage results from the transit period (as agreed upon by the parties or otherwise defined in Article 16 CIM) being exceeded, article 33 of the CIM stipulates that the carrier must pay compensation, not exceeding four times the carriage charge. However, the total of compensation together with that for damages or loss within the transit period will in no case exceed the compensation which would be payable in case of total loss of the goods.

The liability regime for delays, missed connections and cancellations is more favourable to passengers than the one set out in the CIM Uniform Rules. Under this regime, passengers have the right to reimbursement, re-routing, compensation and assistance, under certain conditions.

The limitations to the liability cannot be invoked if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result (article 36 of the CIM).

Under article 40 of the CIM, the carrier will be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure on which the carriage is performed will be considered as persons whose services the carrier makes use of for the performance of the carriage. Under Article 40 of the CIM, the RUs have a possible right of recourse against it if so provided under national laws.

Article 41 deals with possible other actions (identified in the explanatory report as being extra-contractual). These actions are subject to the conditions and limitations drawn in the CIM.

⁷ As of 15 March 2010, 1 SDR = 1,118740 €. Hence, 17 SDR = 19,08 €