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1. The scope of the CMR-Convention (art. 1&2)

1.1 Is the CMR applicable to carriage of goods by road if no consignment note is issued? (art. 1&2)

Yes/No	Convention	National law	Landmark cases	Clarification
YES	In practice, the courts apply the CMR when they are presented with a CMR consignment note, but there are some rare examples of court decisions affirming the position that a valid contract of international carriage of goods may exist without a consignment note being issued, whereby the CMR remains applicable. NOTE: In 2018 the contract of carriage of goods by road according to Croatian national law became a FORMAL contract, whilst the CMR does not explicitly define the nature and form of the contract. Thus, there are two possible outcomes in future development of case law: 1) CMR is applied only if there is a valid contract, which is decided according to the	Contract of carriage of goods by road in national transport is regulated on two levels: Civil Obligations Act (COA, art. 661-698) as general law governing all contracts of carriage and by the Road Transport Act 2018 (RTA) as special law governing contracts of carriage by road. According to the principle lex specialis derogat legi generali, the special law supersedes the application of COA whose norms were designed to apply to all modes of transport. Due to some severe legislative errors, from 1991 until 2018 (except from 1998 until 2002) Croatia did not have a special law for the contract of carriage by road, so only COA applied in the past. In 2018 RTA was enacted, whereby all contracts of carriage by road (goods,	... consignement note in RTA, but COA art. 669 states that a contract of carriage is independent of the existence and accuracy of the consignment note. Reading those two norms together, and taking into account that special law derogates general law, but general law governs all matters not regulated by special law, we can conclude: 1) Since 2018, contracts of carriage by road in Croatia are FORMAL. They must be made in a written form in order to be valid; 2) A contract of carriage exists regardless of the consignment note which does not need to be issued for the contract to be valid; 3) Until 2018 contracts of carriage by road were	...5) It is unclear whether consignment note can be considered as a written form and the contract of carriage itself, or is to be understood as an independent document altogether, existing solely as a proof of the contract. There are two possible outcomes in future legal practice based on RTA 2018: 5.a) If no other written document exists on particular carriage service, the consignment note IS considered a contract of carriage in a written form, thus the contract is VALID; 5.b) Consignment note is only a proof, and NOT the contract itself. If there is no other previously effected written document, the contract is NULL AND VOID.

	national (Croatian) law. There is a strong possibility (see 5.b) below) that most of the contracts will be considered null and void by the courts, and that the CMR will only be applicable based on art. 28. 2) Validity of the contract is decided according to the CMR itself, relying on the uniform application of the int. conventions, where contract of int. carriage of goods is considered a consensual INFORMAL contract. In that case, even if the written form of the contract is not present, the CMR will apply to a valid contract.	passengers, taxi, public transport etc.) are regulated by (only ONE) article 97. According to art. 97 para. 2, all issues not regulated by RTA shall be governed by general law (COA) or international conventions. Art. 97 para. 3 and 6 state that a contract of carriage by road shall be made in a written form for every separate carriage operation, kept in the carrier's premises and presented to the inspection upon request. There are no provisions on the nature of the...	consensual and informal, and a consignment note was usually issued as PROOF of the contract, usually upon taking over the cargo by the carrier. The contract was made informally, via e-mail or phone/sms correspondence, online platforms etc. 4) The manner in which the contracts are made has not changed in practice since 2018 when the new regulation under RTA was enacted. Thus, it is questionable whether the services agreed in such an informal way will continue to be considered by the courts as valid (formal) contracts of carriage...	Due to the facts stated under 3) and 4) above, if the reasoning under 5.b) prevails most of the contracts of carriage by road might prove to be null and void under Croatian law. In Pž-3426/09-4, 14.1.2013, Court of appeal held that according to CMR art. 4 the absence of the consignment note did not affect the existence or validity of the contract which remained subject to the CMR. Although a regular consignment note was not presented to the Court it did not affect the validity of the contract. Defendant was obliged to pay the agreed price of carriage.

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

Yes/No	Convention	National law	Landmark cases	Clarification
YES	The CMR can be made applicable contractually. In such case, even if the CMR is not applicable under art. 1, it will apply based on the contractual agreement (e.g. typically in case of a purely national transport) and will	The principle of freedom of contract is crystalized in art. 2 of the Civil Obligations Act which states that the parties are free to regulate their obligations, and these must be in compliance with the Constitution of the Republic of	Court of appeal, Pž 3294/93-2, 23.8.1994; Supreme court, Rev 27/1995-2, 19.3.1997: The courts in both instances applied the CMR to the legal relationship between the parties in litigation, because the courts found that the parties	Although, in principle it is possible to contract the application of the CMR, the question remains how the court would solve the issue of a potential clash between the provisions of the CMR and the mandatory provisions of

	therefore derogate the dispositive provisions of the relevant national law regulating the contract of carriage (Civil Obligations Act, arts. 661-693). If the CMR is made applicable contractually, any contractual stipulation which would directly or indirectly derogate from the provisions of the CMR shall be null and void (CMR art. 41). However, contractual application of the CMR cannot derogate, directly or indirectly, the mandatory provisions of the relevant national law (ius cogens), in particular the mandatory provisions of the Civil Obligations Act on prescription/limitation of actions (arts. 214-246), the necessary form of the contract of carriage in national transport as prescribed under the Road Transport Act 2018, art. 97 (see 1.1.), the mandatory provisions of national and/or EU law on the choice of applicable law and jurisdiction or any other mandatory national law.	Croatia, mandatory laws and the morals of the society. Further, in COA art. 11 it is provided that the parties may regulate their mutual obligations in a manner other than according to the provisions of this law, unless otherwise indicated by a provision of this law or its meaning. COA art. 9 provides that the parties shall perform their obligations and they are liable for their performance, therefore a contractual obligation is only binding on the parties to the contract. Where the CMR is made applicable contractually, in the hierarchy of the applicable sources of law it ranks as "lex contractus" after the Constitution and mandatory law. On the other hand, where the CMR is applicable based on art. 1, by its legal force it has primacy over national legislation, thus it ranks higher than mandatory national law (art. 134 of the Constitution).	contracted the application of the CMR as it was clearly stated by the CMR consignment note. In effect, the Supreme court upheld the decision of the appelate court and stated that it was correct to apply the CMR provisions on the carrier's liability in this particular case, since the parties expressly agreed to apply the CMR to their contractual relationship.	national law. We have not seen such an example in the practice of Croatian courts. In particular, the question arises in relation to the applicability of the CMR arts. 30-32, as they are not in conformity with the relevant mandatory provisions of Croatian law. According to the information available to the authors, in practice the parties contract the application of the CMR with the Protocols in cases of national transport operations, to avoid the severe problems arising from the application of the national Road Transport Act 2018 (see above 1.1.). However, such contracts have not been tried in courts yet, and there is no new case law available as to the acceptance of such contractual stipulations after the enactment of the RTA 2018.

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	No available case law.	The national law applicable to the contracts of carriage of goods in national transport (Civil Obligations Act, art. 661-698) does not provide for similar exceptions.	No available case law.	No available case law.

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**	Croatian Civil Obligations Act (COA) regulates the freightforwarding agreement as a special type of contract (arts. 852-868). The forwarder contracts freight, storage and other related services in his own name, but for the account of his client. In case of court proceedings/litigation arising out of performance of one of those contracts, only freight forwarder has the mandate to sue (but usually has no legal interest for it). In order for the client (cargo owner) to be able to sue, the forwarder has to assign his claim formally to him. The forwarder	Court of appeal, Pž 1977/13-3, 10.2.2016: Forwarder is not liable based on CMR art. 3 for performing the carriage, but for the choice of the performing carrier based on the provisions of COA art. 856. In this case a consignment was lost due to a theft ocurring during transport. Both forwarder and carrier were sued jointly and severally. The court found that the plaintiff did not prove that there was a contract of carriage between him and the forwarder, nor did he prove that there was a contractual relationship between him and the performing carrier. It was held that while performing under the FF	Court of appeal, Pž-3231/03-3, 12.9.2006: The consignor made a FF agreement for carriage of medical equipment. The forwarder organized the carriage by the carrier with whom he had a bulk agreement, as a consolidated shipment (carriage in one truck of cargo of various owners). The cargo was stolen during carriage. According to COA art. 867/3 the forwarder is liable as a carrier in case of a consolidated shipment which would not have happened had there been no consolidation of cargo. This fact was not assessed by the 1st instance court, although the defendant carrier

		is generally not liable as carrier (German legal tradition), except: 1. if he performs the carriage himself 2. if he agrees to be liable for carriage (del credere) 3. if fixed sum is agreed for all costs (forfeit) 4. if the forwarded cargo belongs to more than one consignor (consolidated shipment) In practice, there is a lot of misunderstanding in the industry on contractual liability between the forwarder and the performing carrier. Moreover, the consignors frequently erroneously take the forwarder for the carrier, thinking that he agreed to carry the cargo himself, whilst he is only responsible for organising the transport.	agreement, the forwarder contracted the carriage in his own name. Under a FF agreement, the forwarder is responsible for the choice of the carrier and since he acted with due care in choosing the carrier, he was not liable for damage caused to the principal. The relationship between the forwarder and the principal was not subject to the CMR. On the other hand, the court held that the liability of the performing carrier had to be assessed as extracontractual liability but under the CMR rules, based on art. 28. See also Court of appeal: Pž-5826/07-4, 29.12.2009; Pž-6814/08, 12.3.2013.	objected, claiming that the forwarder was liable in the first place, and that there was no contractual relationship between him and the plaintiff. There is no information whether the forwarder assigned his claim against the carrier to the plaintiff, who sued the carrier directly, and the courts disregarded the procedural issue as well as COA art. 867 and held carrier liable under CMR art. 17 and 23, because he failed to prove he acted with due care, used adequate parking, took rest etc.
☐	**Physical distribution**	No case law available	/	/
☐	**Charters**	No case law available	/	/
☐	**Towage**	No case law available	/	/
☐	**Roll on/roll off**	No case law available	/	/
☐	**Multimodal transport**	No case law available	/	/

☒	**Substitute carriage**[1]	Under art. 690/1 of the Civil Obligations Act, the carrier who entrusts another carrier with the performance of all or part of the carriage of a consignment that he received into his charge for carriage, shall be liable for the carriage from the moment he received the consignment into his charge to the moment of its delivery, but he shall be entitled to reimbursement from the carrier he entrusted the consignment to. This rule applies when a carrier contracts carriage of goods first with a shipper and thereafter he contracts another carriage in his own name and for his own account with another carrier to whom he entrusts (wholly or partly) the performance of the carriage.	Court of appeal, Pž-2126/04-5, 30.10.2007: The carrier (company A) engaged another company B which than subcontracted the company C to perform the carriage, due to the fact that the carrier (company A) did not have any available trucks to perform the contracted carriage service. The court held that company A as the carrier could not rely on any of the exoneration defences provided under art. 17. The carrier was found liable under the contract of carriage for not having delivered the consignment, as he was responsible for the acts/omissions of the person (substitute carrier) to whom he entrusted the performance of carriage. Had the carrier acted diligently when choosing the substitute carrier he could have ascertained that the person to whom he entrusted the carriage (company B) was a fictitious company, and he could have avoided/prevented the loss of consignment by not entrusting that person with the performance of the carriage service.	When under a contract of international carriage of goods the carrier cannot perform the carriage by his own truck and he entrusts the performance of the contracted carriage service to another person, the CMR applies and the carrier remains liable for the carriage as if he performed it himself. The carrier remains liable for damage to/loss of cargo under art. 17 and based on art. 3 according to which the carrier shall be responsible for the acts or omissions of a person of whose services he makes use for the performance of the carriage, as if such acts or omissions were his own. The position of Croatian courts is that a substitute carrier, as the carrier's subcontractor is such person of whose services the carrier makes use for the performance of the carriage and for whose acts and omissions the carrier is liable as if such acts/omissions were his own. Furthermore, the contract between the carrier and the substitute carrier is also considered as a contract of carriage subject to the CMR. See also Part II, 8.1. and 8.2. See also Court of appeal, Pž-3339/2015-5, 22.2.2017 and Supreme

[1] partly art. 3

				Court, II Rev-227/1999-2, 18.2.2003: described in Part II, under 13.3.
☒	**Successive carriage**[2]	COA art. 690, paras. 2-6 provide that where the second carrier takes over from the first carrier the consignment and the consignment note, he shall be deemed a party to the contract of carriage, with the rights and obligations of solidary debtor and solidary creditor, whose participation equals his participation in the carriage. The same shall apply in case where several carriers are engaged under one contract of carriage to take part in a successive carriage of a consignment. Each carrier shall have the right to demand that the condition of the consignment be determined at the moment when he receives it into his charge for the performance of his part of the carriage. Solidarily liable carriers shall participate in damages compensation in proportion with their participation in carriage, except those carriers who can prove that the damage did not take place during their carriage. Objections made to a successive	Court of appeal, Pž-1586/92, 23.3.1993: If the first carrier hands over to the second carrier the consignment and the consignment note, the second carrier becomes a party to the contract of carriage (accession). The first carrier remains in the contractual relationship with the shipper. Both carriers are jointly and severally liable propotionately to their participation in the carriage. The contract entailed national transport and the court applied COA art. 690. Court of appeal, Pž-4455/2016-2, 28.12.2018: The plaintiff engaged the defendant carrier to perform carriage between two towns in Croatia. The contract was concluded via email. The plaintiff claimed that the defendant did not submit a signed CMR consignment note, which amounted to a breach of contract between them. The plaintiff claimed back the price of carriage he paid to the defendant as damages. He claimed that due to this breach he could not perform his	...perform the carriage as a part of an international carriage contract. The court found that upon the defendant's acceptance of the goods the documentation prescribed under CMR art. 35/1 was not produced and that the relationship between the parties did not qualify as a relationship between successive carriers. Therefore, the court treated the relationship as a contract of carriage in national transport which is not subject to the CMR. There is no available domestic case law dealing with the application of the CMR to successive carriage, but bearing in mind that according to national law, a successive carrier is deemed a party to the contract of carriage it is likely that the local courts would by analogy apply the CMR to any individual successive carriage, even if the respective leg of transport is within the national borders, as long as the contract of carriage entails international transport as envisaged

[2] please be reminded that this question only asks to what extent the CMR is applicable to successive carriage. The specifics of art 34/35 should be addressed under question 16

		carrier shall also apply to all the previous carriers.	obligation under the contract of international carriage he concluded with the shipper. The court held that the plaintiff did not prove that there was an obligation of the defendant to submit a signed CMR consignment note, nor that the defendant accepted to...	under CMR, art. 1 and provided that the documentation prescribed under CMR art. 35/1 was produced.
☒	**'Paper carriers'** [3]	CMR applies to paper carriers as contractual carriers. The relevant examples found in the local case law usually entail a forwarder who acts as a contractual carrier. Under national law (COA, art. 858) a forwarder may also perform (fully or partly) carriage of goods whose shipment was entrusted to him, unless otherwise agreed. If the forwarder has also performed carriage, he shall have rights and obligations of the carrier. As explained above, under national law (COA, art. 849/1) a forwarder enters into a contract of carriage with a carrier on his own behalf, but for the account of his client. In such case, he is liable only for the choice of the carrier. However, within the FF agreement, the forwarder may perform carriage as a carrier with his own vehicles or by subcontracting	...vehicles, but only offer freight forwarding services (organisation of transport), who were engaged by the shippers ordering carriage of goods via e-mail or web-shop. There were cases where such forwarder was considered a contractual carrier (COA, art. 858) and other cases where the forwarder was considered to have contracted carriage in his own name and for the account of the shipper (COA art. 849). It is difficult to draw a clear line of distinction in practice. In our opinion, if the forwarder ordinarily offers only FF services, provided this is clearly presented in his documents and on his website, he should be considered purely a forwarder and not a contractual carrier. Court of appeal, Pž 1977/13-3, 10.2.2016: see case summary above under freightforwarding agreement. In	See Deel II, under 13.3. See also what was said herein regarding the application of the CMR to freightforwarding agreements and to substitute carriage.

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

		carriage with a performing carrier. If a forwarder acts as a contractual carrier by subcontracting a performing carrier, he is personally liable for the performance of carriage and CMR applies for such international carriage of goods. There has been a problem in practice regarding forwarders whose business does not include carriage services, who do not have their own trucks or other (road) transport...	this case the court took into account the fact that the forwarder marketed his services as purely FF services, that from his website and from the manner he ordinarily performed his business activities it was clear that he did not act as a carrier.	

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

This survey has been made on the sample of 654 court decisions, mostly of the High Commercial Court (Court of appeal). In the majority of cases (over 60%) first instance courts (commercial courts) mistakenly applied national law (COA) to the disputes arising from the contracts of international carriage of goods by road. Due to the serious legislative problems related to national road transport (see above 1.1.), many of the basic legal concepts otherwise typical for road transport law regarding carrier's liability, exoneration, limitation, limitation of actions etc. are not available under national law. Most of these cases dealt with claims whose value was below 50.000 kn (appx. 6.500 EUR), and were therefore considered as claims of small value where appeal on the grounds of false determination of facts by the 1st instance court is not allowed. On the other hand, the rules of civil procedure do not allow the court to apply inquisitory powers, so the court must decide only on the facts presented and proved by the parties. On appeal CMR was duely applied, but to the state of facts as established in 1st instance, leaving the crucial problem frequently unsolved.

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	According to CMR art. 4 and 9, the contract of carriage shall be confirmed by the making out of a consignment note, which is a prima facie evidence of the existence of the contract, but the absence/irregularity of the CN shall not affect the contract itself.	Under COA art. 668/1, the contract parties are bound to make out a consignment note for each consignment received for carriage. Art. 668/2 prescribes the necessary information to be contained in the CN. Art. 668/4 provides that the CN shall be issued in 3 copies, one for the consignee, one for the carrier (it follows the consignment) and one for the consignor. Under art. 668/5 CN may contain a provision "to the order of" or be made to the bearer in which case the consignor's copy shall indicate that it is a negotiable bill of lading, and the other copies shall indicate that a negotiable bill of lading has been issued.Under art. 669, the existence and validity of a contract of carriage shall be independent of the existence of	Court of Appeal, Pž-1977/13-3, 10.2.2016: Consignor (plaintiff) sued the freight forwarder (FF) and the carrier for damages arising from theft of the cargo in int. transport. He did not present/prove the existence of the CMR CN, nor did he prove that this was one of the forwarding agreements where FF is liable for damages in transport ex lege (consolidated shipment, del credere, forfeit etc). Therefore, the court held: 1. FF cannot be sued for damages under contract 2. carrier is not liable under contract since there was no assignation of rights from FF to plaintiff. 3. The existence of FF/carriage contract was proved by witnesses, in absence of CN. 4. The carrier	Provisions of COA regulating consignment note are consistent with the CMR. It follows that although CN is a mandatory document it does not derogate the principle of informality of the contract of carriage. A valid contract may exist even if no CN was issued. However, this position, which has been generally accepted in the national legal doctrine and case law, is now being challenged by the new RTA 2018, in particular art. 97 (see explanations under 1.1. above). Due to the problem elaborated above under 1.1., the future case law will have to decide whether consignment note can/is to be considered as contract of carriage itself, in which case CN will have to be issued not only because of COA art. 668, but also in order for the

			a consignment note and its accuracy. It follows that although CN is a mandatory document it does not derogate the principle of informality of the contract of carriage. A valid contract may exist even if no CN was issued. However, this position, which has been generally accepted in the national legal doctrine and case law, is now being challenged by the new RTA, in particular art. 97 (see explanations under 1.1. above).	was found liable for damages in tort (CMR art. 28). Court of appeal, Pž-3426/09-04, 14.1.2013: It was held that according to CMR art. 4 the absence of the consignment note did not affect the existence or validity of the contract which remained subject to the CMR. Although a regular consignment note was not presented to the Court it did not affect the validity of the contract. Defendant was obliged to pay the agreed price of carriage.	contract to be entered into in a written form and therefore existent and valid according to RTA art. 97. If that will not be the case, the obligation of issuing CN prescribed under COA art. 668 will become irrelevant, since it would be the proof of a null and void contract of carriage.
2.2	YES	The shipper is liable to the carrier for all expenses, damage or loss arising from the false information in the consignment note. (CMR art. 7/1).	COA art. 667 provides that the consignor shall notify the carrier about the nature, contents and quantity of the consignment and indicate the point of destination, name and address of the consignee, his name and address and everything else necessary for the carrier to fulfil his obligations without delay and hindrance.	Court of appeal, Pž-5446/04, 15.11.2007: The defendant shipper was held liable for the increase in the price of carriage arising from the fact that the carrier had to return from the Austrian border to the port of Rijeka because the shipper did not timely inform the carrier of the exact gross weight of the shipped goods (2 containers – 2 x 23.590 kg of frozen fish). The court upheld the carrier's claim for the cost of additional carriage and the cost of transhipment,	...because he informed the shipper in writing asking for instructions in accordance with CMR art. 1, but the shipper did not respond in reasonable time. The carrier therefore took such steps as seemed to him to be in the best interest of the shipper. To avoid loss of goods he returned to the port of shipment where the consignment was weighed, transhipped, carried and delivered to the consignee. The increase in the cost of

				as these extra expenses arose without his fault. The court held that it is correct to presume that upon taking over the consignment the carrier could not have noticed that the quantity of goods did not correspond to the quantity (gross weight) entered into the consignment note, especially considering the large weight of empty containers (1.800 - 1.900 kg). The carrier established the exact quantity of goods only during the carriage (at the Austrian border). He immediately informed the shipper that the consignment had to be returned to the port of shipment (Rijeka) in order to be weighed under control of a veterinarian and customs officers. The court held that in so doing, the carrier acted with due diligence...	carriage arose from the incorrect information/instruction of the shipper regarding the quantity of goods. The court of appeal upheld the decision of the 1st instance court, although the 1st instance court decided by applying national law (COA), but the court of appeal established that the final outcome was the same as if the CMR was correctly applied. Court of appeal, Pž-7152/15-3, 8.1.2016: Increase in the cost of carriage due to a larger quantity of goods shipped than that declared in the consignment note is the shipper's liability.
2.3	YES	According to CMR art. 8, on taking over the goods, the carrier shall check: (a) The accuracy of the statements in the consignment note as to the number of	There are no such corresponding provisions of national law. No case law available.	First instance court, P-716/2015-16, 25.11.2016: The carrier was found liable for damage to cargo (toys packed in carton boxes damaged by water) carried in a container.	Court of appeal, Pž-7261/09-6, 16.1.2013: The defendant carrier did not prove any of the reasons for exoneration. The carrier was found liable for damage to a refrigerator of

		packages and their marks and numbers, and (b) The apparent condition of the goods and their packaging. Where the carrier has no reasonable means of checking the accuracy of these statements he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. According to CMR art. 9, the consignment note shall be prima facie evidence of... the conditions of the contract and the receipt of the goods by the carrier. If the consignment note contains no specific reservations by the carrier, it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with		Damage was caused due to the rusty roof of the container discovered and documented upon delivery in the consignee's warehouse. The carrier relied on arts. 10, 17/2 and 17/4/b stating that there was no possible way for him to check the roof of the container loaded onto his truck from a ship by a ship crane. The court rejected the argument and found the carrier liable. It was held that on taking over the goods in the port of transhipment the carrier did not state in the consignment note any reservations regarding the impossibility of checking the container roof (art. 8/2), whilst under art. 8/1 it was his duty to control the accuracy of the statements in the consignment note. Similarly, 1st instance court, P-1299/2015-17, 9.12.2016: damage to goods (wooden ladder) established upon delivery; the court did not accept the defence of the carrier that he could not check the condition of the upper	a forklift truck established upon delivery. The defendant did not prove that the damage ocurred before he took over the consignment: the consignment note did not contain any remarks of the carrier regarding the condition of goods, therefore, it is presumed that the goods were accepted for transport in a sound condition.

		the statements in the consignment note.		side of the transport pallet because the carrier did not enter any such remarks in the consignment note.	
2.4	NO	No case law available.	No specific national law provisions regarding this issue.	No case law available.	No case law available.

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	If under the contract of carriage the carrier undertakes to execute certain customs formalities, he is liable for damage arising from the breach of that contractual duty in accordance with CMR art. 11/3.	No specific national law provisions regarding this issue.	Court of appeal, Pž-2926/09-4,10.1.2014: The carrier was held liable for gross negligence of the driver who did not declare the goods to the customs authorities, which led to a detention of the truck at the border crossing and the driver's imprisonment and finally to a delay in delivery. Court of appeal, Pž-3640/13-4, 23.11.2015: The carrier was held liable for an increase in the	

				cost of customs because he did not collect the necessary customs documentation. Court of appeal, Pž-4120/11-3, 5.11.2014: upon a subrogated claim of an insurer of the TIR guarantee against the carrier, the carrier was held liable because he did not adequately discharge the TIR carnet. The amount of damages he had to pay was equal to the amount of custom duties that had to be paid to the customs authorities and the related claims arising from the fact that the TIR carnet was not duly discharged. Similarly, Court of appeal, Pž-7609/2013-3, 24.1.2017.	
3.2	YES	When, under the provisions of the CMR, a carrier is liable for compensation in respect of total loss of goods, besides owing a compensation calculated by reference to the value of the goods at the place and time at which they were accepted for carriage, in addition he owes the carriage charges, customs duties and other charges incurred in respect of the carriage of the goods.	No specific national law provisions regarding this issue.	Supreme court, Rev-7/01, 6.6.2002:The court held that, since the consignment was never delivered and the carrier was liable for compensation in respect of total loss of goods, the carrier was not entitled to receive freight or other costs of transport. On the other hand, the cargo owner was entitled to claim from the carrier the costs of transport, customs duties and all other costs and	No case available case law dealing specifically with the carrier's obligation to refund the costs of carriage, customs, etc. in case of a partial loss of goods.

				expenses related to the carriage of the lost consignment. Lower instance courts follow that position, see e.g. Court of appeal, Pž-7372/2014-2, 16.5.2017 (case summary in Deel II, 10.1.); see e.g. 1st instance court, P-75/2017-45, 3.5.2019: Total loss of consignment of beer barells occurred due to the capsizing of the truck in a traffic accident. The court held that in addition to the market value of the goods referred to in CMR art. 23/1, the carrier was liable to pay for the necessary costs of transhipment, collection, transport, disposal and customs in accordance with CMR art. 23/4.	
3.3	YES	According to CMR art. 11/3, the liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not	No specific national law in this regard.	No case law available.	/

		exceed that payable in the event of loss of the goods.			
3.4	NO	According to CMR art. 11, for the purposes of the customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all the information which he requires. The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of such documents and information. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier.	According to COA art. 666, the carrier's obligation is to deliver the goods he received for carriage at a designated place to the consignee. COA does not provide for an obligation of the carrier in respect of customs and other documents and formalities. As stated above (see 2.2.), it is the sender's duty to furnish to the carrier the relevant information regarding the consignment and everything else necessary for the carrier to fulfil his obligations without delay and hindrance. If he fails to do so he shall be liable for any damage arising therefrom (COA, art. 667). On the other hand, the obligation to deal with customs is expressly regulated as the forwarder's responsability under COA, art. 857. It is provided that, unless otherwise stipulated in the freightforwarding contract, the order for shipment of the goods across the border shall contain the obligation of the forwarder for carrying out of the required	Court of appeal, Pž-7495/2015-4, 27.11.2018: The carrier sued the shipper for unpaid freight, whilst the sender submitted a counterclaim for damages as he had to pay double the amount of import customs duties for 8 packages due to inaccurate customs documentation. The consignment consisted of 34 packages of goods carried from the UK to Croatia in two trucks. The value of goods in one truck was falsely declared because the invoices for the goods were not correctly distributed between the two trucks. 1st instance court upheld the defendant sender’s counterclaim erroneously relying on CMR art. 8 (the carrier’s duty to check the accuracy of the statements in the consignment note as to the number of packages and their marks and numbers). The Court of appeal overruled and refused the sender’s counterclaim establishing that under the contract of carriage it was not	/

			customs procedures and payment of customs duty and costs for the account of the consignor.	the carrier's obligation to enquire into either the accuracy or the adequacy of customs documents and formalities. Moreover, the court found that in this particular case the import customs formalities were fulfilled by the sender's freight forwarder and that therefore they were not the carrier's responsibility.	

4. The right of disposal (art. 12)

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

No case law available.

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)?

No case law available.

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	No case law available.	No case law available.	No case law available.	No case law available.
5.2	YES	No case law available.	No case law available.	No case law available.	No case law available.

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		COA, art. 670 deals with packaging. The shipper is obliged to pack the goods in usual way, suitable to protect it from damage or presenting danger to goods or persons. The carrier is obliged to protest packaging upon taking over the cargo if he observes deficiencies or inadequacies of the packaging or is otherwise liable for damages occurring therefrom, but will be relieved of his liability if the sender insisted he took over the cargo as such. Carrier has to refuse taking over the goods if, due to their ill packaging, they present danger to others. He is liable for damages to other cargo/persons arising out of ill packaging, but has a right of recourse against the sender/cargo interested party.	There is no case law dealing with damages to other cargo/persons caused by deficient packaging by the shipper. The existing cases deal with the liability of the carrier for damages to cargo caused by deficient packaging by the consignor. The carrier was not liable for damages only in cases where he entered a remark to that effect into the CN upon taking over the cargo for carriage; in all other cases he was found liable for damages, although offering statements by witnesses on his (oral) protests about the state and way of packaging upon taking over the cargo.	In practice, entering remarks into the CN by the carrier (driver) upon taking over the cargo is often strongly objected by the shipper, even threatening with termination of future business. In order to preserve business, carriers often object orally to different deficiencies, most notably way of stowing the goods, lashing, packaging etc., when this is done by the sender, but not making written remark. Also, drivers are often not present during loading (or are not allowed in the premises), and therefore not able to enter remarks in CN. In case of subsequent litigation, courts however strongly rely on written remarks in CN in order to allow

				carriers their rights under CMR/national law.

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

No case law available dealing with this particular issue.

Under national law, according to COA, art. 670, the consignor shall pack the goods in a prescribed or usual way to prevent any damage or threat to the safety of people or property. The carrier shall warn the consignor of any detectable faults in packing; failing that he shall be liable for any damage to the consignment due to such faults. But the carrier shall not be liable for any damages to the consignment if the consignor, although warned of the faulty packing, insists that the carrier receives the consignment for carriage irrespective of such faults. The carrier shall refuse the consignment where the faults in its packing are such to pose a threat to the safety of people or property or to cause damage. Any damage sustained by third persons due to faulty packing while the goods are in care of the carrier shall be borne by the carrier, who shall be entitled to demand reimbursement from the consignor.

The extent of damage for which the consignor is liable in case of faulty packing has to be assessed according to the general provisions on tort liability contained in COA, arts. 1045-1109.

Under Croatian law, the wrongdoer is liable for a full compensation. COA art. 1090 provides that the court shall, taking into account the circumstances that have occurred following the occurrence of damage, determine the amount required in order to reverse the injured party's financial position to the state in which it would have been had the wrongful act or failure to act not occurred. The wrongdoer is obliged: a) to idemnify the injured party for material damage, i.e. any loss or damage actually sustained and any consequential loss or damage arising directly therefrom, e.g. loss of profits, loss of income, loss of financial gain (material damage); and b) to provide a just pecuniary compensation for non-material damage suffered as a consequence of violation of personality (death, personal injury, health impairment, compromised reputation) (see COA, art. 1046, 1085, 1089, 1100, etc).

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

Notification of damage has to be made in time and in writing, i.e. entered into the consignment note upon delivery of the cargo, or in writing in case of not apparent damage in time limits set in Art. 30.

Court of Appeal, Pž-1934/11-5, 19.5.2014.

Consignee (defendant) refused to pay freight to the carrier (plaintiff) because the cargo arrived with delay. There was no remark in the CN, nor the subsequent written notification 21 days after delivery. The consignee claimed he did not enter the remark in the CN when he took over the cargo since "it is a waste of time". The court held that the consignee is an enterprise that has to act professionally and with utmost due diligence when carrying out his duties arising from his business activities. In this case it means entering written remark in the CN as to the delay of the cargo, irrelevant of the "waste of time" it means for him, either at delivery or 21 days after it. As he failed to do so, he has no claim and cannot refuse to pay freight to the carrier.

Court of appeal, Pž-4833/08-4, 9.12.2008.

Carrier (plaintiff) delivered granite pallets to the consignee (defendant), who in turn did not make any reservation in the CN to the condition of cargo upon delivery, or 21 days after that in writing. He did however make written reservation as to the "not apparent damage" 24 days after delivery, and a written protest to the consignor as to the deficient state of the goods (from the contract of sale) 5 days before. The court held that the carrier is not liable since the notification to the carrier was made after the time-limit, even if he succeeded in proving the cargo had "not apparent damages", which he failed to do. Even more so, he made a protest to the consignee within the time limit (obviously aware of the damage at the time), but failed to do the same to the carrier, and therefore lost his claim against the latter from the contract of carriage.

Court of appeal, Pž-4107/08-4, 10.5.2011.

A contract of sale of a crane was made between the seller (plaintiff) and buyer (carrier, defendant). Buyer (who was also the carrier) claimed that the crane was damaged as it was sewn and than subsequently welded, and not properly assembled. The court held that the buyer as carrier had to make a written remark into the CN straight away while taking over the cargo, or within time limits set in art. 30 upon arrival. As there are no remarks in the CN issued, nor did he prove during the process that he had indeed made a timely protest to the state of the cargo to the seller (from the contract of sale or contract of carriage), he had to pay the selling price to the plaintiff.

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

Not apparent damage is the damage that cannot be observed with the naked eye without thorough inspection or unpacking of the goods. It is also the case where the consignee is not present during taking over of the cargo from the carrier.

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

No case law to that effect available.

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)

Croatian courts consider themselves competent to hear the case when a) place of taking over or delivery of the cargo is in Croatia or b) place of business/branch of plaintiff is in Croatia, or the contract was entered into through branch or agency in Croatia.

Court of appeal, Pž-4100/2016-2, 3.2.2017.

The 1st and 2nd instance courts held that Croatian court is not competent to hear the case concerning damages from international carriage of goods by road. In this case the competence of court in case of dispute was stipulated on the carrier's (plaintiff) receipt for payment of freight charges, and the defendant did not protest the receipt (argument for the court competence by the plaintiff). The court held that this does not constitute a valid agreement between the parties on the competent court, since receipt is an unilateral document. Moreover, Croatia was neither place of taking over or delivery of the cargo, nor was it place of residence or principal place of business, and the plaintiff did not prove in the proceedings that the defendant has a branch office or agency through which the contract has been entered into.

Court of appeal, Pž-6743/2015-2, 8.1.2018.

The court held that if there is no agreement between the parties on the competent court, the defendant having residence/place of business in a State party of CMR can be sued in another state party if that is the place of fulfilment of the contract in question (forum solutionis). On one part of the receipt for freight charges Croatian place of delivery was stipulated, therefore for this part of the receipt a court in Croatia is competent. On the contrary, for claims arising from receipts where neither place of taking over of the cargo or place of delivery is in Croatia, Croatian court is not competent.

Court of appeal, Pž-1588/2015-2, 6.9.2017.

1st instance court erroneously applied the law when he failed to apply Regulation Bruxelles I, when deciding on the competence of the court in 2015. Croatia is an EU member state since 1.7.2013., and this Regulation is directly applicable. Its provisions regarding recognition and enforcing court decisions in civil and commercial matters are not related nor applicable on the way of delivery of foreign deeds, to which national norms apply. Further, the Regulation does not set aside the application of international conventions to which Croatia is state party (such as CMR) as 1st instance court held, but rather, according to art. 71 of Bruxelles I, does not interfere with provisions of CMR regarding the same matters covered by Bruxelles I. Therefore, in this case art. 31 CMR is to be applied in a repeated process before 1st instance court.

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	1 year period of limitation (PoL) is applied in numerous case law, invariably on appellate level, and by 1st instance courts when CMR is correctly applied as material law. In all other cases of (erroneous) application of national law to international carriage of goods by road, the longer time limits are applied (see herein: National law), which can substantially change the course of litigation, prolong the process and increase the costs. The longer (3 year) period has never been applied, although pointed out by parties or court in several cases.	Due to normative problems in national road transport law concerning contract of carriage by road (see above 1.1.), a severe discrepancy exists between the CMR and national law regarding PoL. There are no special provisions regarding PoL in RTA. Therefore, only general rules of COA on PoL can be applied. According to COA art. 230, PoL for claims for damages is three years from the moment when the injured party learnt about the damage and the person responsible for damage (subjective period), but PoL cannot be longer that five years from the moment when the damage occurred (objective period).	1st instance courts: 10 P-196/15-17 from 2.7.2015. The carrier (plaintiff) brought action for payment of freight against cargo interest party (defendant), due after several carriages under contract of carriage were performed. Carrier issued 6 receipts, out of which only one was partially paid by the defendant. The court decided that partial payment of the sum due in the receipt does not lead to termination of the PoL regarding the rest of the sum due. This was founded on older case law of Supreme Court Rev-913/80, 2.10.1980 and Court of appeal Pž-5081/05, 16.5.2008.) 70 Pž-3311/13-4 from 19.2.2016 Cargo interested party (plaintiff) claimed that the carrier (defendant) is liable for damages due to delay in delivery and brought a claim almost 3 years after the delivery. Carrier claimed that statute of limitation applies. The plaintiff had sent a written protest for payment of damages to the carrier after the delivery, but	claim, in which case suspension of PoL that started with the protest would have been terminated, and the PoL would have set in by the time the claim was brought to court. If this was not a rejection of the claim, the PoL did not set in and the claim is allowed. The 3 year PoL due to wilful misconduct etc. was never applied in Croatian case law. Regarding the PoL issue, we have to mention a very serious problem in respect of a frequent misapplication of national law to CMR cases by 1st instance courts (see above 1.1. etc.), and the fact that usually several years are needed for the Court of appeal to decide on the appeal only to return the case to the 1st instance court for repeated ruling, which in turn takes further couple of years to reach another 1st instance ruling. PoL in OA is three/ five years (subjective/objective), whereas in CMR is one/ three years (regular/wilful misconduct case). In (numerous) cases where 1st instance decisions are based on (erroneous) application of national law, the claims which would be time-barred

			the carrier never replied to it. The Court held that the 1st instance court, deciding on the PoL, failed to ascertain whether a correspondence from carrier to the plaintiff a couple of months after the protest constituted a written rejection of the	by the CMR would (and are) allowed according to national law, and it takes many years (and costs) before final decision is made applying one year PoL.

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		In principle this would be possible. According to art. 70 of the Civil Procedure Act, the parties to the contract of carriage can expressly stipulate in writing that a particular court in Croatia shall have exclusive competence to hear a dispute arising from the contract of carriage as the court of 1st instance, provided that such court has ratione materiae competence to hear such case under national law. Since Croatia is an EU member state, the prorogation of jurisdiction is also subject to Regulation Bruxelles I bis, art. 25. Furthermore, under Croatian law the parties may award exclusive jurisdiction to hear the disputes arising from the contract of	No case law available.	/

		international carriage of goods in accordance with CMR art. 33. Arbitration in Croatia is regulated by the 2001 Arbitration Act (based on the UNCITRAL Model Law.There is one permanent arbitration court based in Zagreb under the auspices of the Croatian Chamber of Economy.		

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)

In available case law this group of persons always includes the driver during his employment with the carrier - Court of appeal Pž-2926/09-4,10.1.2014: Carrier is liable for the gross negligence of the driver who did not declare the goods to the customs which led to detention of the truck at the border and to the driver's imprisonment, finally resulting in delay in delivery; Court of appeal Pž-10783/2013-5, 11.5.2016: Goods damaged due to the truck falling of the road as the driver fell asleep; Court of appeal Pž-7527/07-4, 11.3.2011: Carrier found liable for delay and extra costs due to detention of the truck that was loaded above the maximum weight as the driver did not properly control the cargo loading and stowing arrangement.

In one case a subcarrier was considered as "agent, servant..." - Court of appeal Pž-3339/2015-5, 22.2.2017, for the case summary see below 13.3.

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

A carrier is liable for loss or damage to the cargo, for delay in delivery, and for the consequential costs and expenses arising therefrom, when such loss, damage or delay is caused by acts or omissions of the persons referred to in art. 3 committed during the time of their employment. It seems that the courts interpret this liability of the carrier for other persons too widely, as even a theft committed by the carrier's driver is considered to be within the scope of

the carrier's liability. Therefore, a criminal act of a driver is considered an act within the scope of his employment - Court of appeal Pž-6776/2014-2, 6.6.2016: One out of 10 pieces of aluminium rope were stolen by the carrier's driver. Carrier denounced him to the police, but was nonetheless found liable for damage as the loss of goods was caused by an act of his employee.

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 damage or loss to cargo transported and costs related to transport (f.e. customs duties). Burden of proof he exercised due professional care during transport and that the damage is attributable to one or more exonerating grounds from Art. 17 lies on the carrier. Case law shows very high standard of professional care exspected on the part of an average carrier while deciding on his liability for damage to cargo during transport, and a very restrictive approach in deciding on the existence of exoneration causes from art. 17/2 and 17/4. The majority of cases in 1st instance suggest the idea that the carrier is liable for any damage to cargo occurring during transport where the burden of proof to the contrary and on the existence of any exonerating cause lies on the carrier, whereby he usually has to have entered certain facts into the consignement note upon taking over or delivery of the cargo in order to suceed with the exoneration. There seems to be insufficient understanding of the institute of special risks from art. 17/4 and of the related shift of the burden of proof from art. 18/2 on the part of the carriers as parties in litigation, as well as on the part of first instance courts. Additionally, special risks are deemed to be part of factual basis which cannot be invoked for the first time in appeal in cases where claims are under 50.000 kn (apx. 7.000 EUR), which are numerous. Therefore, if the carriers (and their legal representatives) do not adequatly state the grounds for exoneration and reverse burden of proof from art. 18/2, the argument cannot be invoked in the appeal, which leads to substantially narrowed possibility of exoneration of the carrier for damages in general. Moreover, this analysis, as well as some previous ones, clearly shows that in the majority of cases 1st instance courts apply national law to disputes arising from contracts on international carriage of goods by road, instead of the CMR. Croatian national road transport law does not provide a legal concept of special risks (as in art. 17/4), or reversed burden of proof (art. 18/2) in those cases. When the false application of material law (national law instead of CMR) in 1st instance judgements is joined with the impossibility to present new facts in the appeal and general lack of specialization in road transport law among legal practitioners and road haulage industry, the outcome as presented in this analysis is expected, yet lamentable.

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	*Carrier is held liable under the CMR art. 17/1 for damage to cargo occurring during transport due to the hit of the rear cargo, although the loading of the cargo was done by the sender (special risk).*	*Carrier is liable for loss/damage to cargo based on presumed fault liability. No special provisions regarding damage caused by other cargo carried.* No *case law regarding this issue in national transport available.*	Court of appeal, Pž-4028/04-3, 11.6.2007: The carrier was liable for damage to the printing machine that occurred during transport, caused by the hit of the rear cargo. Although loading was performed by the sender and the carrier invoked exoneration based on art. 17/4c and art. 18/2, the carrier was still held liable because "as a professional carrier he must have known that special care and precaution is needed during transport of fragile cargo and he must have taken all necessary measures to prevent the damage to the cargo", and he had failed to prove that he had taken those measures, as well as those from art. 18/5. Therefore, he was not exonerated on the ground of special risks from art. 17/4c.	The court rejected the carrier's appeal because he failed to prove he took a) all necessary measures to prevent damage to fragile cargo during transport and b) measures from art. 18/5. The courts failed to realize that the existence of special risk from art.17/4c and presumption from art. 18/5 renders the proof under a) irrelevant. Art. 18/5 does not apply to this case at all. Although the damage to the large and heavy printing machine was caused by the hit of another (rear) cargo, the fact of defective lashing and securing of the machine, and not of the rear cargo was discussed in both court decisions. 1st instance court erroneously applied national law instead of CMR, which did not affect the outcome of the case in meritum.
8.5	YES	W*hen goods of higher value are stolen when transported by a truck with a tarpaulin, carrier is held liable for damage under*	N*o specific provision of national law.* *No case law available.*	*Court of appeal, Pž-3339/2015-5, 22.2.2017:* *The carrier was held liable for partial loss of valuable cargo*	

		art. 17/1 and 3, because such truck is not deemed suitable for such cargo. *In one case heard by a first instance court, the carrier was found liable for damage to cargo resulting from a defective container, although container was provided by the sender.*		*(technical equipment, Playstations) due to theft during night parking on the properly lit and guarded parking. Courts in both first instance and appeal held that the truck with tarpaulin is not suited for carriage of such valuable cargo.* *First instance court, P-716/2015-16, 25.11.2016: The carrier was found liable for damage to cargo (toys packed in carton boxes damaged by water) carried in a container. Damage was caused due to the rusty roof of the container discovered and documented upon delivery in the consignee's warehouse. The carrier relied on arts. 10, 17/2 and 17/4/b stating that there was no possible way for him to check the roof of the container loaded onto his truck from a ship by a ship crane. The court rejected the argument and found the carrier liable. It was held that on taking over the goods in the port of transhipment the carrier did not state in the consignment note any*	

				reservations regarding the impossibility of checking the container roof (art. 8/2), whilst under art. 8/1 it was his duty to control the accuracy of the statements in the consignment note.	
8.6	YES	CMR a*rt. 20 applied in one case. Goods which have not been delivered 30 days after the agreed date of delivery are to be considered lost and not delayed. The carrier is to be held liable for the loss of cargo caused by theft during transport, including payment of import customs duties.*	*Civil Obligations Act, art. 687: The carrier is liable for delay in delivery unless he proves there is no fault/guilt on his part for the delay. The liability is limited according to the limits set in the national legislation or an international convention. There is no limitation for delay in delivery either under the Road Transport Act (lex specialis) or Civil Obligations Act (lex generalis), so only the limitation set in the CMR can be applied.*	First instance court judgement no. *P-3832/05 of 28.9.2006. overruled by:* C*ourt of Appeal, Pž-7349/06-10 of 3.3.2010.*	First instance court held that the carrier was liable for payment of import customs due to his liability for delay in delivery of the cargo, which was stolen (together with the vehicle) during transport. The court of appeal overruled the judgement, claiming (i.a.) that according to art. 20, cargo not delivered 30 days after the agreed delivery date is lost and not delayed, and the carrier is therefore liable under the provisions on loss of cargo, and not for delay in delivery. Due to a high amount of custom duties, this is pertinent to the issue of limitation of liability in both cases.

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 term "Circumstances…" under art. 17/2 in accessible Croatian case law always interpreted as an act of God (force majeure, vis maior) in continental legal systems of German legal tradition (cause of damage has to, inter alia, be external to the carrier).

THEFT is not considered as "circumstance…" and the carrier is liable for damage occurring therefrom. Parking on the well-lit and guarded parking lot is not a ground for exoneration. In the few reported cases the courts held that the carrier was liable because he did not succeed to prove the existence of "circumstances..", where he was asked (and failed) to prove he acted as a professional conscientious carrier to avoid the damage. Theft during parking is considered a risk inherent to transport activity, which the carrier has to count with in his profession.

Landmark cases:

Supreme Court, Rev 761/10-2, 14.12.2011.

The truck and the cargo were stolen overnight, whilst parked in the vicinity of the police station and police patrol. The Court held that the carrier is strictly liable under art. 17/1, and therefore liable for loss occurring from the risk of theft. Theft cannot be considered as an act of God in the haulage profession, but as a risk inherent to this profession. Therefore, theft of the vehicle and the cargo cannot be considered as vis maior (understood as "circumstances…") from art. 17/2 nor can the carrier be exonerated from his liability.

First instance, P-1483/13, 2.4.2015.; Court of appeal, Pž-3339/2015-5, 22.2.2017.

The cargo of technical equipment (Playstation) was carried from Sveta Nedelja, Croatia to the Netherlands and stolen during parking for night rest in Germany. The carrier used a subcarrier to perform the carriage, which he did in truck with tarpaulin (found to be inadequate for such a carriage). Courts in both instances found that theft from the truck parked (even) on the guarded parking lot with security cameras is not a "circumstance…" which could exonerate the carrier from liability for loss of goods, since "theft cannot be considered an act of God in haulage (…) because of the very nature of this profession".

First instance court, P-115/03, 25.11.2003.; Court of appeal, Pž-2126/04-5, 30.10.2007.

Large amount of commodity for production of consumption oil was stolen during transport from Croatia to Hungary. Since the transport had to be performed with several special trucks that the contractual carrier did not have himself, he subcontracted parts of the carriage to one subcarrier, who subcontracted further to second subcarrier. The first subcarrier proved to be a fictitious company without an existing business premise, which the carrier using due professional diligence had to check, but failed to do so. Such a failure resulted in theft and loss of cargo for which the carrier was found liable,

because should he had used due diligence by checking out the identity of the subcarrier, he could have avoided the theft. Therefore, the theft cannot be considered as act of God (Cro. "viša sila") in the sense of "circumstances…" in art. 17/2.

First instance court, P-2572/05, 10.6.2008; Court of appeal, Pž-5879/08-11, 1.2.2011.

The cargo was stolen during overnight parking. First instance court ruled that theft is not an act of God (Cro. "viša sila", Lat. "vis maior") because such an event has to be unavoidable even if foreseen. In this case the court held that theft was avoidable if foreseen (Cro. "slučaj", lat. "casus"), and the carrier using due professional diligence must have foreseen that parking on this lot entails risk of theft, and can therefore not be exonerated on the ground of an act of God. The judgement was overruled by the appellate court, which confirmed that theft is not an act of God as envisaged by art. 17/2, but because the first instance court failed to ascertain whether the loss occurred due to the instruction given by the sender, and according to the long established practice between the parties (that the carrier had to park over night on that very parking where the loss occurred), in which case another ground for exoneration from art. 17/2 would exist.

UNHIDDEN TRAFFIC ACCIDENT is considered a risk inherent to haulage profession, and not an event amounting to an act of God in the sense of art. 17/2. Therefore, the carrier is liable for damage to goods caused by an unhidden traffic accident.

Landmark case: Supreme Court judgement VSH Rev 2949/95, 15.12.1999.

An unhidden traffic accident is a risk inherent to road transport due to the frequency of this risk occurring in everyday transport. Due to that, it cannot be considered as an act of God (vis maior), and the carrier is liable for damage to the cargo suffered from such an accident.

NOTE: This case was about national carriage of goods by road, so the national law was applied, which foresees an act of God (vis maior) as a ground for exoneration. In Croatian legal system the germanistic understanding of an act of God applies, in which three characteristics of an event have to exist: it has to be unavoidable, unforeseeable and external. Clearly, the Supreme court in this case held that traffic accident in general is a risk inherent to the road haulage profession and not external to it, notwithstanding the circumstances of a particular case. As the CMR institute of "circumstances…" in Croatian case law is understood, made equal and applied as the institute of an act of God (vis maior), and not "per se", such an understanding of unhidden traffic accident is followed by subsequent case law and lower courts, and the carrier is liable for any damage occurring due to a traffic accident.

FINAL REMARK: Croatian case law on CMR shows that the term "circumstances…" from art. 17/2 is interpreted as equivalent to the legal concept of an act of God (Lat. vis maior, Fr. force majeure), as understood in German legal tradition, which Croatian law is part of. According to that doctrine, for "circumstances…" to apply the event has to be unforeseeable, with unavoidable consequences and external to the carriage. Carrier is liable for lat. casus, where the event is not external nor unforeseeable, since a prudent carrier using due diligence should have foreseen its occurrence or taken measures to

avoid it. Unhidden transport accident and theft during parking (on any kind of parking lots, even those of highest standard) are deemed as inherent to transport operations (not external to it, therefore not vis maior) in general, so the carrier in a particular case is not being exonerated for damage occurring due to those reasons.

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

Generally, the concept of special risks as grounds for exoneration from the carrier's liability is scarcely applied in Croatian case law, showing that the transport industry is barely aware of their existence and potential (especially before 2000). There are only few relevant cases, mostly heard by the Court of appeal, where special risks were invoked. The carrier is freed from liability if he proves he took all necessary measures under the circumstances related to the cargo and carriage performed, acting with due diligence as professional carrier, which standard is set rather high in practice. The carrier can also be freed from liability if he enters remarks as to the deficient loading and other special risks in the consignment note upon taking over the cargo, but carriers seldom do that due to various reasons: haste, insufficient training to that effect of the drivers, opposition by the consignees and preserving the business relationships.

First instance court, P-5336/05, 12.3.2009; Court of appeal 28. Pž-6271/09-3, 19.4.2011.

The cargo of fresh mushrooms was loaded by different people acting on behalf of the consignor into the carrier's truck, which was equipped with the "termoking" technology, which means it was only able to preserve the loading temperature of the cargo, but was unable to further lower that temperature. Due to that fact that was known to the consignor, the cargo had to be pre-cooled prior to loading, which was the case in previous carriages performed between the same parties. The carrier proved that in this particular case the mushrooms were not pre-cooled in the coolers and then loaded, but were loaded at the external temperature of 16 C. Although the cooling system was fully functional, it was unable to sufficiently lower the temperature of the mushrooms during transport, and they arrived at the destination rotten. Further, the carrier proved that the boxes were overfilled with cargo, and loaded by persons acting on behalf of the consignor tightly against the door, preventing the necessary air circulation. On taking over the goods, the carrier protested on the temperature, overfilling of the boxes and deficient loading, but the consignor insisted that the carrier took over the goods saying that "everything will be all right". The carrier made the written protest in the consignment note to that effect. He was fully exonerated from liability in both 1st and 2nd instance, since he succeeded to prove the existence of special risk from art. 17/4 c (loading by the consignor) and d (special nature of the cargo) together with the causal link from art. 18/2, as well as the fact that his equipment in the cooler was fully functional during the whole transport period (art. 18/4).

First instance court, P-225/03, 19.1.2004; Court of appeal Pž-4028/04-3, 11.6.2007.

A large printing machine was partially damaged during transport from Paris to Zagreb, due to the hit of the rear cargo during transport. The courts held that the carrier "…cannot invoke the special risk exoneration from art. 17/4, unless he proves he took all the necessary measures under the circumstances and proceeded according to special instructions given by the consignor". The carrier claimed that the consignor did not prepare and secure the machine

adequately for the transport, and that the machine was a sensitive cargo, and therefore he invoked art. 17/4 c and d. There is no information on who did the loading and stowing of the cargo, nor whether the carrier entered remark to that effect in the consignment note, and those facts were not invoked nor proved during the litigation. Courts in both instances found that the carrier was liable because damage to the cargo occurred during transport performed by the carrier, who did not succeed to prove that he undertook all necessary measures to secure such sensitive cargo against possible moving and subsequent damage during transport. The courts held that the carrier who professionally engages in transport operations "must have known" what are those measures for this type of cargo, and must have taken them, which he failed to prove in this process. Note: The CMR was applied as material law only by the Court of appeal.

First instance court, P-14/13-8, 14.6.2013; Court of appeal, Pž-4071/2014-2, 17.1.2017.

The cargo of textile bundles got partially damaged when 6 out of 11 bundles got dirty and stained during transport. The driver did not enter the remark as to a deficient state of the cargo into the CMR consignment note upon loading, while the consignee entered the remark as to a deficient state of the cargo upon delivery. Because of that, and due to the statements of the witnesses made in the proceedings, the courts in both instances held that the carrier failed to prove that the damage was attributable to the risk of loading by the sender from art. 17/4 c according to art. 18/2, and was therefore held liable for damages.

First instance court, P-13/13, 16.10.2013; Court of appeal Pž-10871/13-5, 3.11.2015.

The cargo of Fujitsu plasma monitors got damaged during transport. The carrier claimed the damage was attributable to special risk from art. 17/4 b (defective or inadequate packing) which he objected to the sender when taking over the cargo, but the courts in both instances found that the carrier did not enter the remark to that effect into the CMR consignment note at that time, and was therefore held liable for the damage occurring during transport.

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	Croatia became a party to the 1978 CMR-SDR Protocol on 31 January 2017, effective from 1 May 2017. To all the cases arising until 1 May 2017 the original text of the CMR 1956 applies, with limitation of liability set at 25 GF/kg of damaged/lost cargo. Due to an increase in the value of gold, 25 GF equals the value of approximately 370 EUR/kg, depending on the price of gold on the given day of calculation. The value of the goods transported (and therefore the amount of damage occurring) is seldom higher than the amount of appx. 300 EUR (or more) per kg which is the limitation of liability when calculated based on 25 GF per kg. Therefore, the concept of limitation of the carrier's liability was of little practical relevance in Croatian law before 1 May 2017, and almost never invoked by the carriers in the court proceedings. Consequently, the amounts of damages awarded in the CMR case law in Croatia have most frequently been the full (unlimited) amounts of	According to the Civil Obligations Act, art. 683/2, the carrier can limit his liability to the amount set by the national legislation or by an international convention. As there is no provision regulating the limitation of liability of the road carrier in the relevant national legislation (in particular, in the Carriage of Goods by Road Act 2018), in case of damage to/loss of cargo in national transport, only the limitation from the CMR art. 23/3 (as amended by 1978 Protocol as of 1 May 2017) can be applied by analogy. However, there is no case law to this effect yet.	THE RIGHT OF LIMITATION APPLIED Supreme Court, II Rev-7/01-2, 7.6.2002: 1st and 2nd instance courts awarded damages according to the cargo value at the time and place of taking over for transport (art.23/1). Although the carrier did not invoke the right of limitation, Supreme court held that the lower courts had to take into account the limitation set to 25 GF/kg as applicable law, and prove that the actual value of the goods did not exceed that amount, which they failed to do, so the awarded amount of claim is not lawful. 1st instance, P-13/13, 16.10.2013; Court of appeal Pž-10871/13-5, 3.11.2015: Limitation of liability set at 8,33 SDR not to be applied since Croatia (at the time) was not a party to the CMR-SDR Protocol 1978. Therefore, such limitation cannot be applied if stipulated in general terms of the carrier. The court awarded the full amount of damages since it was lower than the amount calculated by	...to Russia. Supreme court: the value of cargo to be calculated according to art.23/1, not according to the value in the customs declaration. The court has to ascertain that such value is lower than limitation in GF from art. 23/3. The limitation in SDR cannot be applied - Croatia not a party to the Protocol at the time of loss (the suit filed in 1995, repeal in 2017, returned to the 1st instance for 3 times!). NO RIGHT OF LIMITATION INVOKED BY THE CARRIER OR THE COURT (FULL AMOUNT PAID) - the approach followed in the vast majority of cases 1st instance, P-494/07, 19.6.2008; Court of appeal, Pž-6814/08-7, 12.3.2013: Amount of damages awarded according to the seller's price paid by the plaintiff. First instance, P-5432/01, 14.3.2002; Court of appeal Pž-6009/02-4, 3.5.2006: Loss of cargo of medical equipment due to a theft. Damages awarded according

		damages. The possibility for the court to apply the limitation from art. 23/3 ex offo, has been used only in a few cases to that effect, and exclusively by the high(er) courts.		applying the correct limitation set to 25 GF/kg. Supreme Court, Rev-7/01, 6.6.2002; 1st instance, P-357/11, 26.9.2012; Court of appeal, Pž-7372/2014-2, 16.5.2017: The plaintiff claimed 182.500 GF for damage to cargo (shoes) occurring during transport...	to the value set in the seller's receipt.
10.2	NO	N*o case law where art. 24 & 26 were applied.*	N*o provisions in national law equivalent to art. 24 & 26.*	/	/

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)

Art. 29 has never been applied in the available case law in Croatia.

As elaborated under 10.1. above, the institute of limitation of liability according to art. 23/3 is very rarely invoked in the court proceedings in Croatia. This can be attributed to two possible reasons:

1. the carriers and the courts have little specialization in transport law, therefore they are generally not aware of the concept of limitation of the carrier's liability in any mode of transport. Thus, the civil tradition of the law of obligations is followed, where the general principle of full restitution (lat. restitutio in integrum) applies. If the parties (carriers) do not claim this right in the proceedings, 1st instance courts will not ex offo apply the limitation due to the procedural rule of the burden of proof, and the high(er) courts will only rarely repeal the lower courts' decisions due to a false application of material law on those grounds.

2. Since Croatia did not accede to the 1978 SDR-CMR Protocol until 2017, the calculation of limitation in GF according to the CMR 1956 made the institute of limitation of liability redundant, because the amount of limitation (cca 300 EUR/kg) was (almost) always higher than the actual value of the goods per kg.

Due to the fact that a full amount of damages can be claimed, the concept of "breaking" the limits as set in art. 29 became irrelevant.

*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?*

Art. 29 CMR was applied in only one reported case, dating from period of ex-Yugoslavia (1972). In case Sl-647/72 from 14.6.1972. Court of Appeal in Zagreb stated that carrier is only exceptionally liable for loss of profit, if damages are attributable to his gross negligence or wilful misconduct. There is a gross negligence, and consequently liability for loss of profit, if the carrier (i.e. his driver) entered in CN upon taking over the cargo the weight of 25.580 kg, and delivered 4.050 kg less cargo, with explanation that he did not weigh the cargo when taking it over for carriage and that he has been obviously deceived when he confirmed larger quantity of goods in CN.

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	NO	Never	N*o case law available. Unable to answer.*
Theft during parking	YES	Never	In the available case law, the carriers were always held liable for the loss of cargo caused by theft, irrespective of where the theft occurred. This included the guarded and well-lit parking lots on the highways, parking near the police station and police patrol, theft of goods together with the vehicle etc. According to a Supreme Court decision, theft is a risk inherent to the haulage profession and the carrier is always liable for damage arising therefrom. There is no exemption from liability in cases where the carrier made a necessary stop/overnight stop on the best parking lot, or otherwise used utmost professional care (for case law see above 9.1.)
Theft during subcarriage (for example an unreliable subcarrier)	YES	Never	The carrier is liable for subcarriers, and loss or damage to cargo occurring during subcarriage entails his liability. He has to use utmost professional care in selecting subcarriers, including proving the reliability and good repute of subcarrier. In a case where it was proven that the subcarrier was a fictitious company with no business premises, the carrier was fully liable for the loss of cargo (theft), but no wilful misconduct or fault equivalent to it (art. 29) was invoked by any of the parties in the

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

			proceedings (for case law see above 9.1.) In one case, the subcarrier was held as agent or servant of the carrier in the meaning of art. 3, and the carrier was held liable for damage to cargo on that ground (Court of appeal, Pž-3339/2015-5, 22.2.2017).
Improper securing/lashing of the goods	YES	Sometimes	Damage to cargo occurring due to improper securing/lashing of the goods is deemed as lack of due professional care by the carrier, making him liable for damage even in cases where the loading was performed by the sender. The only way for the carrier to be freed from liability is if he entered remarks on improper/insufficient packaging/securing cargo for transport in the consignment note upon taking over the cargo for carriage. See 9.2. above.
Improper loading or discharge of the goods	YES		The carrier is not liable for damage arising from improper loading/discharge only if it was done by the sender/consignee according to art. 17/4 c, and only if he entered a remark to that effect into the consignment note.
Temporary storage	YES	Never	N*o case law available. Unable to answer.*
Reload/transit	YES	Never	N*o case law available.*
Traffic	YES	Never	The carrier is always liable for damage to cargo caused by a traffic accident, even if occurring without the fault of the carrier's driver, because such accidents are a risk inherent to the normal/everyday performance of transport activities and are not considered as acts of God (seen as "circumstances...) by Croatian courts. See above 9.1.
Weather conditions	YES	Never	N*o case law available.*
Overloading	YES	Never	N*o case law available.*
Contamination during / after loading	YES	Never	N*o case law available.*
Contamination during / after discharge	YES	Never	N*o case law available.*

13. Successive carriage (art. 34 – 40)

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

No case law available.

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

No case law available.

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

Successive carrier takes over the cargo and the consignment note from the previous (actual) carrier who performed the previous part of the carriage.

The carrier who undertakes the whole transport operation from another (contracting) carrier and performs the carriage alone (or subcontracts the transport further to a third carrier who performs the actual carriage) is a substitute carrier.

LANDMARK CASES

Supreme Court, II Rev-227/1999-2, 18.2.2003:

The contract of international carriage of goods was made between the plaintiff and the 1st carrier (it was signed and stamped by him and faxed from his fax to the plaintiff), to whom the plaintiff also paid half of the freight. The 1st carrier subcontracted the carriage to the 2nd carrier (subcarrier) and forwarded to him the amount received as freight. The 2nd carrier actually performed the entire transport operation, during which the cargo was stolen. The dispute was whether the 1st carrier can be sued and whether he is liable for damage that occurred during transport. The Supreme Court upheld the decisions of the lower courts whereby the 1st carrier (contractual carrier) was found liable for damage on the ground that "…the fact that (the 1st carrier) entrusted the carriage to (the 2nd carrier) does not exonerate him from his liability for the carriage and the cargo to the plaintiff…". As a legal ground for this, the Supreme Court cited the provisions of the national law, while the rest of the case was argued by applying the provisions of the CMR.

Court of appeal, Pž-3339/2015-5, 22.2.2017:

The 1st instance court found, and the Court of appeal upheld as proven and undisputable, that the plaintiff made the contract of carriage with the carrier (DHL International). DHL, as a contractual carrier subcontracted the carriage to another carrier who factually performed the carriage, during which the cargo (Playstations) went stolen during an overnight stop on a guarded (CCTV) and well-lit parking lot. 1st instance court applied the national law (Civil Obligations Act, art. 688) and decided that the carrier was liable for the persons that performed the carriage on his behalf, and the Court of appeal upheld this finding, although pointing out that the CMR should have been applied as material law, but the findings would nonetheless remain the same (liability of the contractual carrier for acts/omissions of the subcarrier). It is important to note that: a) there is no available explanation/reasoning as to the fact whether DHL in this case was acting as a forwarder/logistician (who, according to Croatian law, is only exceptionally liable under a contract of carriage) or as a carrier in the first place; and b) the reasoning is based on the CMR art. 3 (liability for servants and agents), whereas this case deals with subcarriage.

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
NO	Croatia is not state party to the E-Protocol. The procedure to that effect was not initiated by the Ministry of Transport, nor is it envisaged in due course. The lack of incentive by the authorities on the national level is due to the lack of understanding of the division of competences between the EU and the member states, whereby the issues in the national competence (such as the contract of carriage and related issues) are not gaining any professional interest or comprehensive coverage and	As of 8 July 2017, the use of digital services is regulated by the Act on the implementation of the Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. The digital certificates for digital transactions have recently been enforced as a standard. E-Customs is also being implemented, but the digital transport documents are still not used or envisaged in practice. The new Road Transport Act 2018 when regulating the consignment note speaks only of the details to be contained therein, but contains no provisions on its form (paper/digital).	No *case law available*	Public authorities (customs, police) still ask for paper CMR consignment notes for the transports or transits in/through Croatia, making the introduction of e-CMR CN impossible at the moment, and impeding the use of such documents for all transport operations on the (very important) Vb and X transport corridors through Croatia.

	legislative incentives. Strong emphasis is put on the harmonization and implementation with/of the EU road transport law, leaving all other issues (that are in the national competence) unattended.			

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?

Doctrine:

N. Radionov, M. Mišković Aguilar: EDI-CMR Prtocol 2008 - A Step in the Right Direction, Poredbeno pomorsko pravo/ Comparative Maritime Law, 55 (2016), 170, p. 49-68.