CMR – Country Report Format

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

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

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

Yes/No	Convention	National law	Landmark cases	Clarification
YES	Article 4, second paragraph of the CMR Convention sets out that the absence of the issuance of a consignment note does not hinder the existence or the validity of a carriage contract that remains subject to the provisions of the CMR Convention.	Article 3 of Decree law 239/2003 of 04 October sets out that the absence of the issuance of a consignment note does not hinder the existence or the validity of a carriage contract.	Supreme Court Judgment of 20 May 1997, in proceedings number 297/97 confirms this understanding. It is declared that the mere agreement between carrier and shipper confirm existence of the carriage contract. There is no web link available	The issuance of the consignment note is not mandatory to confirm the existence of a carriage contract which is entered into by mere agreement between the shipper and the carrier.

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

Yes/No	Convention	National law	Landmark cases	Clarification
YES	The CMR Convention applies when the carriage is international, that is to say, when the carriage is planned to occur between intended (as per the contract) places of shipment and delivery which are situated in different States	The Portuguese Internal Carriage by Road Act (Decree law no. 239/2003) applies when the road carriage occurs solely within the Portuguese territory.	N/A	Neither the CMR Convention and Portuguese Internal Regime / Decree law no. 239/2003) appears to allow their respective applications solely by force of a contractual provision contained in the consignment note and without verification of

	and when at least one of the mentioned States is a Contracting State to the CMR Convention, as per article 1, paragraph 1 of the CMR Convention. Contracting States (but not the parties to the carriage contract) who are parties to the CMR Convention may exclude its application to their cross border trades and also to permit the use of CMR consignment notes within their internal carriages as per article 1, paragraph 5 of the CMR Convention. Portugal has not agreed to any of this exclusion or extension. Article 6, paragraph 1, subparagraph k) of the CMR Convention appears to apply when the carriage is per se international (as per the definition of article 1, paragraph 1), and when there may be uncertainty about the application of the CMR Convention (for instance when the dispute is putt forward in a non Contracting State court).			the conditions determined by the CMR Convention or by Decree law no. 239/2003 to apply to the contract . However, and pursuant to the provisions of the Rome I Regulation, we think that there is room to argue that, in case of a contractual relationship that places a conflict of law problem/question, the parties may elect a law or a Convention to rule any dispute that may arise from said relationship. This typically will involve parties based in different countries and even for a domestic carriage.

1.3 Is there anything practitioners should know about the exceptions of art. 1 sub 4?

Yes/No	Convention	National law	Landmark cases	Clarification
YES	Carriers performing house removals normally contain clauses in their General Terms and Conditions making refference to the CMR Convention.	Carriers performing house removals normally contain clauses in their General Terms and Conditions making refference to the CMR Convention or to the Portuguese Internal Regime / Decree law no. 239/2003).	N/A	

1.4 To what extent is the CMR applicable to the following special types of transport? (art. 1&2)

Please indicate if (partly) applicable	Service	National law	Landmark cases CMR	clarification
☐	**Freight forwarding agreement**	Decree law no. 255/99, 7th July, regulates the freight forwarding activity. The freight forwarder is objectively liable for the acts of any other person, in other words, for the carrier with whom it has concluded the carriage contract, however his obligation ends within a 10 months time limit pursuant article 16 of the above-mentioned decree law and not within a 12 months time limit as provided in article 32 of the CMR Convention. The right of recourse whose period of limitation results from arts. 32 and		

		39(4) of the CMR Convention is exercised against the carrier or against the freight forwarder-carrier but not against those who merely acted as freight forwarder.		
☐	**Physical distribution**	The convention applies when the distribution is made by land transport.		
☐	**Charters**	It applies if the charter party makes reference to the CMR Convention.		
☐	**Towage**	The Convention requires that the carriage is made by a vehicle, this expression is understood as including tows and semi-trailers.		
☐	**Roll on/roll off**	The CMR Convention continues to apply even during the part of the journey made by another mode of transport other than the truck, as long as no cargo transfer is made.		
☐	**Multimodal transport**	The convention is not applicable to the multimodal carriages where the container or swap-body, after successive intermediate reloadings, are carried by several means of transport. The carrier may be subject to Conventions or national laws that		The Decree law 239/2003 is applicable to the multimodal transport in which the goods, with intermediate reloading, is carried by several means of transport (air, rail, sea and river). The non reloading of the goods as it is with the Convention. The national law only applies to the part of the

		regulate other means of non-road carriage with lower compensation limits.		transport made by road, and the carrier does not benefit from a more favourable regime that is particular to the non-road part as in the because of the CMR Convention.
☐	**Substitute carriage**[1]	The CMR Convention only applies to the first carrier if the subcontracted carrier is not mentioned in the consignment note. Therefore, who has the right to dispose of the goods cannot bring an action directly against the subcontracted/subsequent carrier or subcontracted carrier under the Convention, it will only able to do so through a extracontractual liability civil suit. The initial carrier is liable for the acts performed by the substitute carrier (art. 3 of the CMR Convention).		
☐	**Successive carriage**[2]	The Convention fully applies to successive carriages.		
☐	**'Paper carriers'** [3]	The CMR Convention applies to the contractual carrier to the extent that he undertook to perform the carriage.		

[1] partly art. 3
[2] please be reminded that this question only asks to what extent the CMR is applicable to successive carriage. The specifics of art 34/35 should be addressed under question 16
[3] parties who have contracted as carrier, but do not perform any part of the transport, similar to NVOCC's in maritime transport

		Decree-Law no. 255/99, of 7 July, establishes the legal regime applicable to access and performance of the freight forwarding activity. Article 15 stipulates that when the freight forwarder act as it were itself the carrier, the CMR Convention applies. Freight forwarding companies are liable before the clients who have hired them, as if they were the carriers that did not comply with the contract, carriers which they have hired to perform the carriage, without prejudice to the right of recourse that they may exercise, under the terms of article 15, no. 1 and no. 2 of the above-mentioned Decree law.		

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

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

2.1. Is the consignment note mandatory?

2.2. Nice to know: Does absent or false information on the consignment note give grounds for a claim?

2.3. Is the carrier liable for acceptance and delivery of the goods? (art. 8, 9 & 13)

2.4. To what extent is the carrier bound to his remarks (or absence thereof) on the consignment note? (For instance: Can a carrier be bound by an express agreement on the consignment note as to the quality and quantity of the goods?)

Number of question	Yes/No	Convention	National law (civil law as well as public law)	Landmark cases	Clarification
2.1	NO	The carriage contract is consensual in nature and informal, it is valid despite not being in writing. In so much as the carriage contract exists and is valid even if there is no CMR consignment note, therefore such document is not mandatory as per article 4 of the CMR Convention. However, the consignment note is proof of the terms and conditions of the performance and execution of the contract and of the state, quantity, weight, number of packages, received by the carrier (article 9 of the Convention). The consignment note is also proof of the reception of the goods by the carrier.	According to decree law 239/2003 the carriage contract is consensual and informal in nature it is valid despite not being in writing. In article 3 it is also stated that the national carriage contract is valid and exist despite the fact that there is no consignment note. As in the Convention, the consignment note is proof of the contract and of its terms and conditions, however it is not proof of the reception of the goods by the carrier. Decree law 257/2007 in article 19 stipulates that the carriage of goods on behalf of a third party are described in a consignment note that should accompany the carried goods. And article 30 of this decree law punishes with a fine the absence of a consignment note as well as the incorrect or incomplete filling of the consignment note either by the carrier or by the sender.		

2.2	YES	*If the carrier sustains expenses, losses and damages due to inexact or incomplete information regarding the parties, the places of beginning and end of the performance of the contract, the goods, its weight or quantity and respective identification in the consignment note, he is able to claim from sender such values since he is liable for them (article 7 no. 1 of the CMR Convention)* *If the consignment note state that the CMR Convention is applicable, the carrier is liable for the expenses, losses and damages that the sender may sustain due to such omission. (article 7 no. 3 of the CMR Convention)*	In accordance with article 16 of the Decree law 239/2003 the sender is liable for all the expenses and losses sustained by the carrier due to incorrect or insufficient information contained in the consignment note regarding the goods and the consignees (article 16 no. 1).		
2.3	YES	If the carrier makes no reservations, pursuant article 8, in the consignment note it is presumed that the goods and the package were in good order when the carrier receive them and that the number of packages, the marks and numbers were in accordance	In accordance with article 9 no. 3 of the Decree law 239/2003 the absence of reservations made by the carrier is presumption that the goods and or the package were in good order when the carrier receive them and that the information contained in the consignment note is correct.		

		with the information contained in the consignment note. The goods are considered delivered when the consignee accepts the goods by signing the consignment note or offers a document confirming the reception. The carrier shall deliver a copy of the consignment note to the consignee. The carrier's copy signed by the consignee is a presumption that the goods were delivered.	Under the terms of article 12 of the Decree law 239/2003 the acceptance by the consignee of the goods only occurs with their delivery.		
2.4	YES	The reservations must be precise and substantiated and must be accepted by the sender through the signing of the consignment note. The reservations establish the presumption that the goods were not delivered in the expected quantity or that the goods or its package were not in good order. If the sender does not accept the reservations, the carrier can perform the carriage at his own risk; trying to reach an agreement with the client based on a survey or refuse the carriage (this seems to be the	Article 9 of the Decree law 239/2003 establishes qualitative and quantitative reservations that must be precise and substantiated, and both must be described in the consignment note and require the sender's acceptance. If the sender does not accept the reservations the carrier can perform the carriage at his own risk; trying to reach an agreement with the client based on a survey or refuse the carriage (this seems to be the best option since it balances the risk of performing the carriage with the economic		

		best option since it balances the risk of performing the carriage with the economic disadvantages of refusing a service).	disadvantages of refusing a service).		

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	NO	The sender is required to deliver to the carrier all customs documents necessary for the compliance with customs formalities, failing that he must compensate the carrier for all damages sustained as per article 11 of the Convention.			
3.2	YES	According to no. 4 of article 23 the carrier shall pay, in case of total loss in full and in case of partial loss in the proportion, as a compensation complement, the custom duties and other			

		charges (charges for the storage of the damaged goods).			
3.3	YES	If the loss of the documents took place during the carriage the carrier is liable.			
3.4	NO	In accordance with the Convention, the carrier is not responsible for checking the documents and the information therein are exact or sufficient, it is the sender who is responsible towards the carrier for all damages that may arise from the absence, deficient or irregular documents and information. However, the carrier, in the European Union, must take in account the regulations that set out certain rules concerning the movement of goods between countries of the union, namely the movement of goods subject to excise duty u*nder penalty of being the liable for a tax or criminal offense.*	The national carrier has to take in account all national and Community rules and regulations regarding the documents that must accompany the goods, for example decree-law no. 147/2003, of 11 July, approves the legal regime for the movement of goods object of transactions between taxable persons, namely as to the obligation and requirements of the carriage documents.		

4. The right of disposal (art. 12)

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

The right to dispose of the goods is the right to give instructions to the carrier and to whom he should ask for orders, changing the carriage contract (ex: interruption of the carriage; change of delivery location or consignee).

The sender has the right to dispose of the goods at the beginning of the carriage, and in principle during the carriage, until the delivery of the goods.

The right to dispose of the goods can be transferred by the sender to the consignee by a statement in the consignment note or when the consignee is handed the second copy of the consignment note, in other words the copy that should accompany the goods.

The new instructions to be given by the sender or by the consignee in order to be valid and to make the carrier to comply with them it is required for them to meet certain formal, substance and technical requirements, such as: they should be written in the second copy of the consignment note that belongs to the sender and they should be presented to the carrier; they imply a compensation to the carrier for the expenses and losses that it has sustained with the execution of the instructions insomuch as who holds the right of disposal will pay the expenses and losses caused by the changes to the carriage; they are required to be technically possible and do not interfere with the normal working of the carriers' undertaking or prejudice the senders or consignees of other consignments; and they should not result in the division of the consignment since that in this case a new contract would rise.

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

The carrier will pay the costs and losses caused by the changes to the carriage to the sender or to the consignee depending of who has the right to dispose of the goods.

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	In the event of impediment to the carriage (ex: accident,	Article 13 of decree law no. 239/2003 states that the carrier		

		fallen cargo, impassable roads, road blocks, etc) the carrier must request instructions from those who have the right to dispose of the goods. However, if the instructions do not reach the carrier in due time he will have to act: a) he can carry out the carriage under different conditions than those initially agreed, for instance to ship the goods by rail. However, if the carrier takes no measures that he might consider best for the interest of the person who has the right to dispose of the goods he will be liable for the damages that may arise. b) he can unload the goods for account of the person interested in them, and he will hold the goods or entrust them to a third party, however in the latter case if he does not exercise due care in the choice of the third party he may also be held liable. c) he can sell the goods but complying with the conditions provided by article 16 no. 3,	must request instructions to the sender or if agreed to the sender if it is not possible to comply with the contract as agreed. If he does not receive instructions in due time he must take appropriate measures to safekeep the goods or, if the goods are perishable, to sell the goods.		

		and if he does not meet such conditions he will be considered liable.			
5.2	YES	If the delivery is refused by the consignee and the carrier does not request instructions to the person entitled to dispose of the goods.			

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	This being one of the sender's obligations. The consignment note must contain the gross weight of the goods or their quantity otherwise expressed, as per article 6 of the CMR Convention, *therefore the package is considered part of the goods.*	One of the sender's obligations is to state in the consignment note the gross weight of the goods, number of packages or the quantity otherwise expressed, according to article 4 of the Decree law 239/2003		

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

One of the sender's obligations is to deliver the goods in good order duly packed and identified. Article 10 of the CMR Convention provides that the sender is liable to the carrier for any defective packing except in the case of apparent defect and if the carrier made no reservations concerning it.

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

Provided they are made within the time limits provided by the Convention. The notification is valid by making reservations, either by the carrier or by the consignee, provided that such reservations are precise and substantiated.

The consignee's reservations do not require acceptance by the carrier and can be oral or written, in the case of non apparent loss of damage the Convention required them to be in writting (letter, e-mail, fax, telex or in the consignment note itself).

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

When the carrier has not detected any loss of or damage to the goods.

When the packaging has no apparent damage or defect.

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

When the consignee has not submitted any reservations within 7 business days after having duly checked the goods with the carrier and if it is the case of non-apparent loss or damages.

7. Procedure (art. 31 – 33)

7.1. When do the courts or tribunals of your country consider themselves competent to hear the case? (art. 31 & 33)

The plaintiff/claimant may choose the Portuguese courts if they meet the following criteria: if it's the court of the place of the defendant's ordinary place of residence, of its main place of business, branch or agency through which it has concluded the carriage contract or; if it is the court of the place where the goods have been received by the carrier or the designated place of delivery.

The Portuguese tribunals are competent provided that the arbitration clause establishes that any litigation will be decided based on the CMR Convention, pursuant to article 33.

If the Portuguese courts are competent, once a legal proceedings based on the CMR Convention has been started in Portugal such proceedings cannot be filed in any other country, even if the court of such country is territorially competent – same claim with the same parties and cause of action (lis pendens)

If a Portuguese court has rendered a decision that has become final under the Convention it may not be called into question by another court despite such court being territorially competent (res judicata).

The decisions rendered by Portuguese courts can be enforced in any other country that is party to the Convention (enforceability).

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	Pursuant to art. 32, no. 2, with reference to no. 1, of the CMR Convention, the conventional international law norm in force in the domestic law dismisses the applicability of the general regime for the suspension of the period of limitation provided by the Portuguese Civil Code. A written claim (the first) suspends the period of limitation of the proceedings until the moment the carrier rejects the claim in writing and returns the documents sent with the claim. It would benefit the carrier to answer and return the documents, only this way will the period of limitation continue to run. In accordance with article 32, the limitation period will be suspended according to the national law – the judicial notice interrupt the limitation period.	The Portuguese Internal Carriage by Road Act (Decree law no. 239/2003) in its article 24 states that the right to compensation against the carrier lapses within a year; it does not provided a date for the beginning of the limitation period in the cases of, for example, failure to comply with the payment against reimbursement or in the case of refusal of the carrier. It does not contemplate the suspension of the limitation period through a written claim addressed to the carrier.		

	The Portuguese law in terms of contractual liability does distinguish negligence from wilful misconduct in terms of fault and in that sense negligence can be regarded as wilful misconduct for the purpose of counting the limitation period as per article 32, no. 1 of the CMR Convention.			

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	Portugal is a party to the Convention and the parties may choose Portugal as the competent jurisdiction. Pursuant to the will of the plaintiff/claimant regarding the Portuguese jurisdiction: the defendant's ordinary place of residence, main place of business, branch or agency ... If Portugal is the place where the goods were received by the carrier or is the designated place of delivery. It may also be a tribunal as long as the carriage contract provides accordingly and as long as the arbitration clause provides that any litigation will be decided based	The Portuguese Internal Carriage by Road Act (Decree law no. 239/2003) in its article 25 states as to national carriages it is possible for the parties to grant competence to a tribunal.	Supreme Court of Justice judgement of 17.11.2020 With this judgement the court decided as to the international competence of the Portuguese courts that the CMR Convention contains special rules regarding international competence that supersede the rules of the Portuguese Code of Civil Procedure and regulation 1251/2012.	

	on the Convention, articles 31 and 33 of the CMR Convention.			

PART II (Chapter II, IV, VI)

8. Carrier liability (art. 17 – 20)

8.1. Who are considered to be 'agents, servants or other persons of whose services the carrier makes use for the performance of the carriage acting within the scope of their employment? (art. 3)

Drivers, employees, subcontracted carriers.

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

The carrier is liable as if the actions had been performed by in insomuch as it was him to undertook to perform the carriage.

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 the goods since the moment when he receives it until its delivery and acceptance at the place of destination, in the same conditions, quality and quantity in which he received them.

There is a presumption of fault and liability on the part of the carrier from the moment he receives the goods until he delivers them.

8.4. If the transported goods cause damage in any way to other goods, is the damage to those other goods considered to be covered by the CMR?

8.5. Nice to know: If a defect or ill-use of a trailer or container is the cause of the damage, is the carrier considered liable? In other words, are the trailer or container viewed as part of (packaging of) the goods or as part of the vehicle? (art. 17 sub 3)

8.6. Is there any relevant case law on art. 20, 21 or 22?

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
8.4	NO	If the carrier is also liable for the carriage of the damaged	If the carrier is also liable for the carriage of the damaged goods		

		goods he will answer under the terms of the convention. If the carrier is not bound to the carriage of the damaged goods he is no longer under the scope of the Convention, we are therefore before a case of extracontractual liability.	he will answer under the terms of decree law no. 239/2003. The damages caused to other goods are out of the scope of contractual liability, the owner of these goods will be compensated under the terms of article 483.		
8.5	YES	The carrier cannot invoke defect of the vehicle that he has used for the carriage to exclude his liability.	Under article 18 no. 3 of the decree law 239/2003 the carrier cannot invoke defect of the vehicle that he has used for the carriage to exclude his liability.		
8.6	NO				

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 Convention only requires the unavoidability of the exclusion cause, contrary to the national doctrine and jurisprudence that require as cause of exclusion an unforeseeable event or force majeure. This distinction is very important in the cases of theft of goods from a truck.

Decree law 239/2003 on national carriages sets out as an exclusion cause unforeseeable events or force majeure, the unpredictability and unavoidability, while the Convention only requires force majeure, the unavoidability.

The force majeure has the underlaying idea of unavoidability: it is a natural event or human action which, despite being predictable and even prevented, cannot be avoided, in itself or its consequences.

The unforeseeable event as the undelaying idea of predictability: the event could not be foreseen and it could have been avoided of it was predictable.

Examples of unpredictability and unavoidability: natural events (unforeseen thunderstorm or icy roads); human actions (armed robbery, theft of goods during daylight time in a survey parking lot, roads blocked due commotions)

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

Besides the general causes of exclusion of liability according to which it is sufficient for to carrier to prove the existence of the facts considered as exclusion of liability, the CMR Convention sets out an exhaustive list of other facts, called preferred causes or special risks that once proven, together with possibility that the loss (loss, damage or delay) has resulted from such cause, release the carrier of his liability. In the preferred causes the carrier to release himself from the liability has to prove the existence of one of the facts listed and that loss, damage or delay may result from such fact.

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	The Judgement of the Court of Appel of Lisbon dated 05.06.08, according to article 17, no. 1 of the CMR Convention, the carrier is liable for the loss, total or partial, of the goods since the moment when the goods are loaded until they are delivered, and the liability for the loss of the goods is calculated according to the value of the goods at the place at time in	Judgement of the Court of Appeal of Oporto dated 07.12.18 Provided that the damages inflicted to the goods have been caused the negligent behaviour of the carrier, his liability is not subject to the limits contained in article 20 of the Decree law no. 239/2003, of 4th October. To exclude such limit, the injured party has the burden of proving the carrier's and his agent's fault.		

		which it was accepted for carriage, according to the stock exchange price, or in its absence according to its current market value or in the absence of both, the usual value for goods of the same nature and quality – art. 23 no. 1 and 2 of the Convention. This liability has a maximum limit: it cannot be higher than 8.33 unit of account per kilogram of missing gross weight, as per art. 23, no. 3 of the Convention. Such unit of account corresponds to a special drawing right established by the International Monetary fund and its value is converted to the national currency of the State of the court deciding the claim at the date of the trial or at the date agreed by the parties (art. 23 no. 7).			
10.2	NO				

11. Unlimited liability (art. 29)

11.1. When is a carrier fully liable ? (i.e. when can the limits of his liability be 'broken through'?) (art. 29)

The most recent judgments of the Supreme Court have restricted this traditional understanding based on a trend that has been followed in Portuguese law and practice and that is aimed at restricting limitation of liability in situations where there is fault on the carrier´s side.

These most recent judgments have decided that unless the carrier proves one of the exclusions clauses of articles 17, 2 and 18 of the Convention that the carrier shall be fully liable regardless of his degree of fault and cannot limit liability as there is a presumption of fault on the carrier´s side. This includes wilful misconduct, intentional conduct, gross negligence and light negligence, i.e., fault in civil law terms. This judgments state that Portuguese law considers equally for the purposes of breaking limitation both intentional conduct and negligence. This understanding is supported inter alia in the following Supreme Court Judgments:

14/06/2011 (proceedings number 437/05.9TBAGN.C1).

-05/06/2012 (proceedings number 3303/05.4TBVIS.C2.S1).

-15/05/2013 (proceedings number 9268.07.0TBMAI.P1.S1). and

12/10/2017 (proceedings number 4858/12.

The most recent Professors of law opinion about interpretation of article 29 CMR tends to go in this last direction, i.e.:

The carrier shall be liable unless he proves the conditions of articles 17,2 and 18 of the Convention;

If the carrier fails to prove the conditions of articles 17,2 and 18 of the Convention, he will be liable without any limitation if the carrier, or his servants or agents, have acted intentionally or with wilful misconduct or, in alternative, with gross negligence; and

If the carrier fails to prove the conditions of article 17,2 and 18 of the Convention, he will be liable but under limitation if the carrier, or his servants or agents, have acted merely with light negligence.

The conclusion is that the current state of the law and practice support the view that unless the carrier proves one of the exclusions clauses of articles 17, 2 and 18 of the Convention, that the carrier shall be fully liable regardless of his degree of fault (intentional conduct or wilful misconduct or gross or light negligence, i.e., fault) and cannot limit liability as there is a presumption of fault on the carrier´s side. This position is supported in the most recent Supreme Court Judgments.

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?*

The Portuguese law does not distinguish negligence from wilful misconduct in terms of fault we apply article 29 of the Convention despite being a case of wilful misconduct or negligence.

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	NO	Never	In the event of road blocks, civil commotions, riots etc. Armed Robbery in a motorway.
Theft during parking	YES	Sometimes	The question here is if the parking lot is surveilled or has video surveillance
Theft during subcarriage (for example an unreliable subcarrier)	YES	Always	He is liable for the actions performed by the subcarrier e.g. if the has parked in an unservailled without video surveillance parking lot.
Improper securing/lashing of the goods	NO	Rarely	Goods not duly packed, e.g. glass inadequately packed that broke due to the poor quality of packaging.
Improper loading or discharge of the goods	NO		*Loading or unloading of the goods by the sender or by the consignee or by persons acting on their behalf.*
Temporary storage	YES	Never	*The carrier is liable for the custodian of the goods according to article 3 of the CMR Convention.*
Reload/transit	YES	Never	*The carrier is liable for the reload because it takes place during the carriage of the goods.*
Traffic	NO	Never	*Under the CMR Convention the carrier is under no obligation to check the documents that are delivered to him by the sender however he should do so because he may be liable under other rules/norms in particular tax and criminal law.*
Weather conditions	YES	Never	I*It depends if they are foreseeable or not.*
Overloading	NO	Never	*Depends of who loads the truck, if the loading is performed by the carrier it is the carrier who is liable.*

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

Contamination during / after loading	YES	Sometimes	If the goods own nature (translated into being specially susceptible of sustaining losses, damages, e.g. fruit that during the unloading appears to be rotten or damaged) as a preferred cause the carrier has to prove the existence and that the damages result from such cause. *Inherent defect of the goods (it is a damage or defect that the goods already have before the carriage, e.g. an machine that spills oil), which being a general clause of exclusion of liability it is enough to prove the existence of the defect.*
Contamination during / after discharge	YES	Never	*Goods damaged during the unloading.*

13. Successive carriage (art. 34 – 40)

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

In the case of successive carriers, every carrier undertakes joint liability for the full carriage in accordance with article 34 of the Convention.

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

It is important that the carrier sued in court to pay a compensation calls to the proceedings all the other carriers through an incident of joinder of parties under article 316 and following of the Portuguese Civil Procedure Code.

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

In the successive carriage there is only a single consignment note while in the case of the substitute carrier there is more than one consignment note.

In the first case there is only one carriage contract while in the second case there is a second contract that is separate and autonomous from the first contract.

To the successive carriage is applicable arts. 34 and 35 of the Convention and to the substitute carrier article 3 applies.

14. E-CMR

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

Yes/No	E-Protocol	National law (civil law as well as public law)	Landmark cases	Clarification
YES	The electronic consignment note must contain the same information as the consignment note mentioned in the Convention. A consignment note that complies with the Protocol will be considered equivalent to the consignment note mentioned in the Convention and, therefore, it will have the same evidential value and will produce the same effects as the latter. The electronic consignment note is authenticated by the parties of the carriage contract through a reliable electronic signature.	*The deliberation no. 813/2020 of the Instituto de Mobilidade e dos Transportes, I.P. published 20th August 2020, updated the carriage contract or consignment note paper and digital templates in order to facilitate and simplify the administrative procedures in the carriage of goods sector.* *Repeal of the Order DGTT no. 21994/99 of 19th October – update of the carriage contracts / consignment note templates.*		

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?

Decree no. 20/2019 of 30th July approved, for accession, the Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the electronic consignment note, concluded in Geneva on 20th February 2008.