This Country report on CMR-convention has been provided by

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This country report has two attachments at the end.

Changed on June 2022 / question 10.2

1. 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	The CMR is applicable not only when a consignment note has been issued, but also, in the absence of a consignment note, but even in case of contractual verbal agreement, demonstrable by any means necessary, which indicates the willingness to apply his Convention.	Article 1678 ff. Italian Civil Code. Legislative Decree no. 298/74. Presidential Decree no. 783/77. L. 27/05/1993, no. 162 Legislative Decree no. 395/2000. L. 20/08/2001, no 334. Legislative Decree no. 286/2005. Council Regulation (EEC) No 4058/89. Reg 1071/2009/CE L. no. 1621 del 1960.	Cass. civ.: 19/06/1981, no. 4029; Cass. civ. 06/01/1982, no. 10 (https://www.avvocato.it/massimario-7546/); Cass. civ.: 10/06/1982, n. 3537; 08/03/1983, n. 1708; 24/05/1991, n. 5869; 23/02/1998 , n. 1937; 27/05/2005, n. 11282 (https://fog.it/giurisprud/ca-05-11282.htm); 07/02/2006, n. 2529; 10/04/2015, n. 7201 (https://sentenze.laleggepertutti.it/sentenza/cassazione-civile-n-7201-del-10-04-2015)	This is the overring approach of the Italian case-law, but there is a minority opinion (Cass. civ. 28 novembre 1975 no. 3983; App. Milan 26/05/1981)

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 not only when a consignment note has been issued, but also, in the absence of a consignment note,	Article 1678 ff. Italian Civil Code Legislative Decree no. 298/74. Presidential Decree no. 783/77.	Cass. civ.: 19/06/1981, no. 4029; Cass. civ. 06/01/1982, no. 10 (https://www.avvocato.it/massimario-7546/); Cass. civ.: 10/06/1982, n. 3537; 08/03/1983, n. 1708; 24/05/1991, n. 5869; 23/02/1998 , n. 1937; 27/05/2005, n. 11282 (https://fog.it/giurisprud/ca-05-11282.htm);	This is the overring approach of the Italian case-law, but there is a minority opinion (Cass. 28 novembre 1975 no. 3983; App. Milan 26/05/1981).

	contractually, even in case of contractual verbal agreement, demonstrable by any means necessary	L. 27/05/1993, no. 162. Legislative Decree no. 395/2000. L. 20/08/2001, no 334. Legislative Decree no. 286/2005. Council Regulation (EEC) No 4058/89. Reg 1071/2009/CE.	07/02/2006, n. 2529; 10/04/2015, n. 7201 (https://sentenze.laleggepertutti.it/sentenza/cassazione-civile-n-7201-del-10-04-2015)	

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	There is. Special reasons justify the exceptions of art. 1.4 (see the clarification)	Furniture removal: l. n. 298/1974; legislative decree no. 395/2000; article 1678 ff. Civil Code. Funeral consignments: Presidential Decree 10/09/1990, no. 285. Postal transport: decree of the Ministry of Economic Development 01/10/2008		Postal transport is excluded from the scope of the CMR as it is regulated by specific international postal conventions (Beijing Convention, 15 September 1999), while funeral consignments (including hearse, body and casket) are excluded as the particolare specialization required under health rules. The third exclusion has raised doubts in Italian doctrine. One possible reason is that this contract includes removal and replacemet of furniture.

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	Article 1699 Italian Civil Code	The consignor can take legal action for damages to goods against both the freight forwarder and the performing carrier (Cass. civ. 16 novembre 2010, no. 23104 (https://www.mondodiritto.it/giurisprudenza/corte-di-cassazione/diritto-civile-trasporto-di-merci-su-strada-destinatario-della-merce-e-anche-chi-firma-la-lettera-di-vettura-cmr-cass-civ-16-novembre-2010-n-23104-6716.html)	The consignemt note under the CMR is often issued, upon request of the carrier, by the consignor or the freight forwarder as a transport agent (for example, in the case of 'groupage').
☐	**Physical distribution**	Art . 5 par. 1 of the EC Regulation no. 44 of 2001	In the dispute relating to a contract concerning the distribution in Italy of movable property between an Italian company (distributor) and a foreign company (in this case, Dutch), the jurisdiction of the Italian judge must be affirmed, pursuant to art. 5 no. 1 of the EC Regulation n. 44 of 2001, which allows to sue the foreign defendant before the Italian judge, if the foreign company is obliged to deliver the goods in Italy, not preventing the possible stipulation of the CIF clause, which involves the assumption by the seller of the cost of transport and related charges. But it does not imply the conventional deplacement of the place of delivery, if this is expressly stated in Italy (Cass. 06/07/2005 no. 14206 http://www.fog.it/giurisprud/ca-05-14208.htm)	
☐	**Charters**	Art. 1689 Italian Cvil Code	Once delivery occurred or upon the expiry of the term in which goods should have arrived, it is immaterial, for the purpose of the recipient's right to compensation for damage, whether the	Non-relevance of the nature of the underlying contract regarding goods (sale or hire) in respect of

			goods were hired or sold (Cass. civ. Sez. III, 21/12/2015, no. 25611)	the recipient's right to compensation
☐	**Towage**	Under Article 56 Highway Code (Legislative Decree 295 of 30 April 1992) trailers fall within the scope of the notion of "vehicle", as well as Article 1.2 CMR		
☐	**Roll on/roll off**	Ministry of Transport Decree no. 303/2014 (transport on roll-on-roll-off vessels of dangerous goods)	Article 2 of the CMR is not applicable if there has been a transhipment of the container containing the goods from the vehicle of the first carrier to that of the second carrier (Cass. civ., III, 21/03/2011, no. 6365 https://sentenze.laleggepertutti.it/sentenza/cassazione-civile-n-6365-del-21-03-2011)	Where the vehicle containing the goods is carried for most of the sea journey by sea (or inland waterways), without transhipment, the CMR shall nevertheless apply to the entire transport
	Multimodal transport	Absence of a national discipline on the multimodal transport	Article 2 of the CMR does not apply if there has been transhipment of the container containing the goods from the vehicle of the first carrier to that of the second carrier (Cass. civ. III, 21/03/2011, no. 6365, http://www.gadit.it/articolo/18504)	Where the vehicle containing the goods is carried for most of the sea journey by sea (or inland waterways), without transhipment, the CMR shall nevertheless apply to the entire transport

☐	**Substitute carriage**[1]	This legal situation is not expressly covered by the Italian Civil Code. It is the result of the legal autonomy of the contractual parties concerned. It falls within the legal category of the sub-contract. See art. 1595 Italian Civil Code. Legislative Decee no. 286/2005. L. 23/12/2014 no. 190 (Stability law 2015), art. 1 par. 247, 248, 249 e 250. Art. 83-bis Legislative Decree no. 112/2008 converted into Law no. 133/2008	The carrier shall be fully responsible for the acts of omissions of his servants/agents and of any other persons of whose services he makes use for the performance of the carriage, when acting in the exercise of their professional activities or employment (App. Turin 04/06/1984). In the transport contract with sub-carriage, the carrier directly performs only a part of it, making use of another carrier, with whom it concludes in its name and on its own account a sub-transport contract, in which he assumes the role of consignor. No relationship is between the original consignor and the sub-transport carrier, who, in front of the first one, acts as an auxiliary of the original carrier (Cass. civ., III, no. 10 06/01/1982 https://www.avvocato.it/massimario-7546/). The carrier that works in collaboration with another carrier (in the name and on behalf of him), is responsible towards the shipper and the sender for the regularity of the entire transport (Cass. civ., III, 01/12/2010, no. 24400 https://annamariatanzi.files.wordpress.com/2011/02/cassazione-civile-sez-iii-01-12-2010-n-24400.pdf)	The carrier is fully responsible of the acts/omissions of all persons whose services he make use for the provision of the transport service
☐	**Successive carriage**[2]	Article 1700 Italian Civil Code Legislative Decree no. 286 21/11/2005	In the event of a single contract performed by successive carriers, each of them assumes responsibility for the execution of the entire transportation, since they become parts of the contract under the conditions set in the consignment note. A declaration of accession of successive carriers is necessary (Cass. civ., 19/12/1978, no. 6102).	The CMR applies to the transport performed by successive carriers in execution of a single contract. It is not applicable

[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

			Article 2 of the CMR does not apply if there has been a transhipment of the container containing the goods from the vehicle of the first carrier to that of the second carrier (Cass. civ. sez. III, 21/03/2011, no. 6365 https://sentenze.laleggepertutti.it/sentenza/cassazione-civile-n-6365-del-21-03-2011) There are differences between successive carriage and sub-carriage (Trib. Forlì 24/09/2012)	if the goods are unloaded from the vehicle. If the carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation
	'Paper carriers' [3]			

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

No, there is not

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	Landmark cases	Clarification

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

			well as public law)		
2.1	NO	The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage. which will continue to be subject to the provisions of the CMR (Article 4).	Article 1684 of the Italian Civil Code: if required by the carrier, the consignor shall issue a consignment note with his autograph, containing the indications required in the previous article and the agreed conditions for transport. See also Article 17 del Reg. Ce 612/2009.	Despite the transport contract is a free form contract, the proof of which can be provided by any means, once the consignment note is issued, that document shall certify the existence and the content of the contract and identify the partsies to it (Cass. civ. 19/12/1978, no. 6102; App. Torino, 04/06/1984; Cass. civ no. 28282/2011 http://www.gadit.it/articolo/64862)	Article 4 only specifies that the consignment note is not required ad substantiam nor ad probationem, given that the absence, irregularity or the loss of this document does not affect the validity or the existence of the transport contract. But nevetherless, this document is the identifying element of the contract for the international

					carriage of goods by road. While a consignment note confirms that the contract exixts, the absence or failure to raise such a note do not invalidate this contract.
2.2	YES	The sender is liable to the carrier for any damages arising from the absence or insufficiency of the consignment note or other documents required by customs, except in the case of	Article 1683 Italian Civil Code: The damage arising from the omission or inaccuracy of the informations or from the non-delivery or irregularity of the documents are borne by the sender.	According to the CMR, the sender is liable to the carrier for any damages arising from the absence or insufficiency of the consignment note or other documents requested by customs, except in the case of fault on the part of the carrier (Cass. civ. Sez. III, 15/07/2003, no. 11073 http://www.finanzaetrasporti.it/documenti/Cassazione_civ_III_2003_07_03_15_n.11073.pdf)	Unlike Article 1684 of the Italian Civil Code, which requires the sender to issue the consignment note, the CMR does not specify who will issue it. Despite this gap, in practice it is issued by the sender or the

		fault on the part of the carrier			freight forward, as a contractor, upon request of the carrier. The sender is liable to the carrier for absent or false information on the consignment note.
2.3	YES	Article 13 CMR: if the goods are lost or have not arrived after the expiry of the period provided, the consignee shall be entitled to enforce in his own name, against the carrier, any	Article 1689 of the Italian Civil Code: The consignor has the right to take legal action against the carrier for damages	Article 13 CMR, like Article 1689 of the Italian Civil Code, gives the sender or the consignee the right to compensation for damages depending upon who has suffered loss or damage (Cass. civ. no. 2075/2014 https://renatodisa.com/corte-di-cassazione-sezione-iii-sentenza-30-gennaio-2014-n-2075-in-tema-di-contratto-di-trasporto-posto-che-in-relazione-al-destinatario-il-contratto-di-trasporto-si-atteggia-come-contratto-a/) and http://www.neldiritto.it/appgiurisprudenza.asp?id=10184#.XnTnXWKJK70). Regarding to the spirit of Articles 12 and 13, the Supreme Court, in accordance with previous and settled case law, stated an important legal principle: Article 13 CMR, like Article 1689 of the Italian Civil Code, gives the sender or the consignee the right to compensation for loss or damages of goods depending on who suffered harm from lost or damaged goods in the reference period (Cass. civ. 13/12/2010, no. 25110; 17/06/2013, no. 15107 https://www.miolegale.it/sentenze/cassazione-civile-sez-iii-15107-2013/)	Under Article 13, the consignee is entitled to sue the carrier for loss or delay from the moment where goods reach their destination or in the event that the deadline for the arrival at their destination

		rights arising from the contract of carriage.			has already expired and he has required delivery of goods.
2.4	YES	Where the carrier has no reasonable means of checking: (a) the accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and (b) The apparent condition of the goods and their packaging, he shall enter his	According to article 1698 of the Ialian Civil Code, the receipt of the goods without reservations extinguishes the actions arising from the contract, except in the case of willful misconduct or gross negligence of the carrier (which must be demonstrated by the consignor). Under Article 1693 Italian Civil Code, if the carrier accepts	The signing of the consignment note by the carrier or its auxiliary without specific reservations or remarks with regard to the weight or packaging of the goods means the absence of elements able to overcome the presumption of exact weight indications of the goods on the CMR consignment note (Cass. civ. 16/11/2010 no. 23104 https://www.mondodiritto.it/giurisprudenza/corte-di-cassazione/diritto-civile-trasporto-di-merci-su-strada-destinatario-della-merce-e-anche-chi-firma-la-lettera-di-vettura-cmr-cass-civ-16-novembre-2010-n-23104-6716.html)	The carrier is bound to his remarks on the consignment note, provided that they have been expressly accepted by the consignor on the document

		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. Such reservations shall not bind the sender unless he has expressly agreed to be	unconditionally the goods, it is assumed that the goods do not have any apparent packaging defects.		

		bound by them in the consignment note.(Article 8.2 CMR)			

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	Article 11, par. 1, CMR: 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		According to Article 7 CMR, the sender shall be responsible against the carrier for all expenses, loss or damages deriving from absence or inadequacy of the document required by customs (Cass. civ. Sez. III, 15/07/2003, no. 11073 http://www.finanzaetrasporti.it/documenti/Cassazione_civ_III_2003_07_03_15_n.11073.pdf).	The sender shall responsible for the proper execution of customs formalities. The sender shall be responsible for all expenses, loss and damage sustained by the carrier by

		them at the disposal of the carrier. He shall furnish him with all the information which he requires. Consequently,the sender shall be responsible for all expenses, loss and damage sustained by the carrier by reason of the inaccuracy or inadequacy of the particulars specified in article 6, para. j), i.e. customs or other formalities (Article 7 CMR).			reason of the inaccuracy or inadequacy, inter alia, of the particulars specified in article 6, para. 1, lett. j (i.e. customs or other formalities (Article 7 CMR).
3.2	YES	The carrier shall be responsible in case of loss and damages to goods, including the reimbursement of expenses incurred by the	Article 1693 Italian Civil Code: The carrier is liable for loss and damage of	The liability of the carrier towards the sender or the consignee for loss of the goods is not excluded or mitigated in the case of omitted indications by the sender with regard to the nature, quantity or weight of such goods (pursuant to article 1683 of the code. civ.) in the absence of a clearly established causal link between the omission or inaccuracy of the aforementioned indications and the fact that caused the loss (Cass., III, 07/10/2010 no. 20808 http://www.gadit.it/articolo/5094)	The carrier is liable in case of loss and damage of the goods delivered to him for transport. His liability is not

		sender for custom duties and other charges.	the goods delivered to him for transport, from the time he receives them to the time when he delivers them to the consignee, if he can not prove that loss or damage are caused by accident, by the nature or defects of the goods or by defective conditions of packaging, or by the fact on		excluded in the case of omitted or false indicications on the consignment note in the absence of a clearly established causal link between the omission or inaccurracy of these indications and the fact that caused the loss. The liability of the carrier includes compensation for damages and reimbursement of all expenses incurred by the sender for the transport, including custom duties

			the part of the sender or the consignee		and other charges.
3.3	YES	According to Article 11, par. 3 CMR, the carrier is liable as an agent for the consequences arising from the loss of the customs documents which accompany the consignment note. But the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.			
3.4	YES	According to Article 11.3 CMR, the carrier is liable as an agent for the			

		consequences arising from the incorrect use or treatment of customs documents accompanying the consignment note, as an agent. But the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.			

4. The right of disposal (art. 12)

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

Under Article 1685 Italian Civil Code, the sender can stop the transport and ask for the return of the goods. He can order delivery to a person other than the consignee originally designated or dispose otherwise, without prejudice to the obligation to reimburse any expenses and to compensate for damage deriving caused by the counter-order.The sender can no longer dispose of the goods from the time when they enter in the availability of the recipient. Likewise, according to Article 12 CMR, the sender has the right to dispose of the goods, in particular by asking the carrier to stop the goods in transit, to change the place of delivery or to deliver the goods to a person other than the consignee originally designated in the consignment note. The right conferred on the sender ceases at the moment when the second copy of the consignment note is handed to the consignee or when the consignee exercises available rights recognized by article 13 CMR.

Italian case-law: 1) during the performance of the contract for thecarriage of goods, the sender has the right to modify the specifications already given to the carrier regarding the terms of payment by the persons entitled to make a claim on the goods (i.e. right-holders of the goods) (Cass. civ., III, no. 3054 del 25/05/1979 https://www.avvocato.it/massimario-7590/); 2) the exercise of the sender's counterorder right (art. 1685 of the civil code), which is not subject to a specific form, does not require the consent of the person performing the delivery, nor his consent to the preparation of the new transport document (Cass. civ., Sez. III, no. 931 del 26/01/1995)

Clarification: The legislator attributes to the sender a "right of rethinking" (the so-called "right of counter-order"), but without prejudice, however, to the carrier's rights and interests. There is a minority opinion of the Italian doctrine which categorises the right of counter-order as a right of withdrawal (article 1373 of the Italian civil code).

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)?

Convention: according to Article 12, par. 7 CMR, the carrier who has not carried out the instructions as given or who has carried them out without requiring the first copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.

National law: The sender is required to provide to the carrier all necessary instructions to identify the goods and to give all instructions suitable for carrying out the transport (article 1683 Italian Civil Code). Therefore, damage resulting from the omission or inaccuracy of these indications shall be born by the sender.

The carrier, in turn, is liable for damage caused by failure to follow these instructions, but if they are impracticable, the deposit or sale of goods (when they are perishable: see also Article 16.3 CMR) can be made (Article 1686). The carrier must promptly inform the sender of the deposit or sale. In this case, the carrier is free from liability.

Landmark cases: The exact execution of the transport contract does not end with the transfer of goods from place to place (primary obligation) but also includes the fulfillment of the other accessory obligations, necessary for the achievement of the objectives set by the parties. Therefore, the carrier is responsible "ex recepto" (for the receipt of the goods) for the best care of the goods carried until they are delivered to the recipient. Therefore, he is not exonerate from its liability in case of refusal to receive the goods from the recipient or failure to provide instructions from the sender or impraticable instructions given, but he is required to deposit the goods according to in art. 1514 c.c.(Cass. civ., III, 07/03/1981, no. 1288 https://www.avvocato.it/massimario-7592/).

Clarification: The sender is required to give the carrier all instructions suitable for carrying out the transport and the carrier, in turn, is liable for damege caused by failure to follow these instructions, except where they are absent or impracticable.

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 normal situations, the sender is obliged and liable to provide instrucions to the carrier. But, under art. 14, if for some reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for	Art. 1683 Italian Civil Code: The sender is required to provide to the carrier all necessary instructions.	The liability of the carrier towards the sender or the consignee for loss of the goods is not excluded or mitigated in the case of omitted indications by the sender as to the nature, quantity or weight of such goods (pursuant to art. 1683 of the code. civ.) where there is no causal link between the omission or inaccuracy of the aforementioned indications and the fact which caused the loss (Cass., III, 07/10/2010 n. 20808 https://www.dirittoprivatoinrete.it/cassazione/Risarcimento%20del%20danno.html)	Considering that Article 1683 Italian Civil Code requires the sender to provide to the carrier all necessary instructions, the sender is liable for not providing instructions or for providing impraticable instructions. In special situations, if for not attributable delay or impediments to carry out

		delivery, the carrier shall seek further instructions from the person being entitled to dispose of such goods, in accordance with the provisions of art. 12. In this case, he is responsible for no requiring futher instructions.			the contract, the carrier can not follow the instructions originally given, he is obliged to seek further instructions from the sender, taking care of the goods (Article 1686). Likewise, under Articles 14 and 15 CMR, the carrier is obliged (and liable) to ask new instructions when, before delivery, for one reason it is not possible to carry out the contract or when circumstances prevent delivery of the

					goods after their arrival at their destination.
5.2	YES	Where circumstances prevent delivery of the goods after their arrival at the place designated for delivery, the carrier is liable if he does not seek further instructions from the sender or if does not follow them.	Likewise, according to art. 1686 of the Italian Civil Code, in case of delays for reasons not attributable to the carrier, he shall immediately seek further instructions from the sender, taking care of the goods and he is liable for not requiring or following them.	Proper fulfillment of carrier's contractual obligations includes, among others, the obligation to immediately seek instructions from the sender in the event of impediments, even temporary, to the performance of the transport contract (art. 1686 Italian Civil Code) (Cass. civ., III, 14/07/2003, no. 11004 https://www.fog.it/giurisprud/ca-03-11004.htm)	Impediments or delays not chargeable to the carrier do not discharge him from his contractual obligations, including that to seek instructions from the sender. The carrier is liable for not requiring or following them.

6. Damage (art. 10 & 30)

6.1. Is packaging (the container, box etc.) considered part of the goods, if provided by the shipper/cargo interest?

Yes/No	Convention	National law	Landmark cases	Clarification
YES	Art. 8 CMR says that the carrier, on taking over the goods, shall check, among others, the apparent conditions of the goods and of their packaging. Where the carrier has no reasonable means of checking them, he can include reservations in the consignment note.	L. 27/05/1993, n. 162	In the case of transport under FCL conditions, in which it is not possible to verify the goods contained in the container, the carrier can take precautions by including reservations on the transport document. But, regardless of the reservations, the indications provided in the document cannot create any presumption of conformity between what is indicated thereon and what is actually delivered. Consequently, the shipper shall afford evidence about the conditions of the goods (Cass. 18/05/2000, no 6468 https://fog.it/giurisprud/ca-00-06468-t.htm; III, 27/06/2007, no. 14835 https://www.fog.it/giurisprud/ca-07-14835.htm; 12/07/2007 no. 15589 http://www.fog.it/giurisprud/ca-07-15589.htm)	In case of sealed container delivered for carriage by the shipper/cargo interest, the container is part of the goods. Since the carrier is not able to verify the content of the container, he includes reservations on the consignment note, such as "said to contain", to protect himself from potential liability. Therefore, the sender is obliged to prove the actual conditions of the goods

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

According to art. 10 CMR, the sender shall be liable to the carrier for any expenses due to defective/faulty packaging, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it. Clarification: in the latter case, there is a presumption of knowledge.

Under art. 1693 Italian Civil Code, the carrier is responsible for loss and damage of the goods delivered to him for transportation, from the time he receives them to the time when he delivers them to the recipient, if he does not prove that loss or damage was caused, among others, by defective/faulty packaging. If the carrier accepts without reservation the goods to be transported, it is assumed that goods did not appaer to have apparent packaging deficiencies. Clarification: in the latter case, there is a rebuttable presumption that can be overcome with contrary evidence.

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

A notification of the loss or damage is considered to comply with all requirements provided for in art. 30 CMR when it is made not later than the time of delivery in the case of apparent loss or damage and within seven days of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent. Otherwise, shall be prima facie evidence that the consignee has received the goods in the condition described in the consignment note.

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

Under art. 30.2, when the conditions of the goods have been duly checked by the consignee and by the carrier, contrary evidence shall only be admitted in the case of loss or damage which is not apparent and provided that the consignee has duly sent reservations in writing to the carrier within seven days, Sundays and public holidays excepted, from the verification. At this end, the expression "not appartent damage" means that it is hidden or no visible.

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

When, after delivery, the consignee finds not apparent loss or damage, not finded before.

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)

According to the Italian courts or tribunals, the jurisdiction concerning the international carriage of goods by road lies with the judge of the place where the goods were taken over. This jurisdiction is not modified by artcle 55 of the international Convention of 27 September 1968 (ratified with Italian Law No. 804 of 21 June 1971), given that the latter international instument governs jurisdiction in particular matters (Cass. civ. 05/11/1981, no. 5814).

In transport contracts regulated by the CMR, jurisdiction shall be determined according to art. 31 of this Convention

(Cass. civ. 05/11/1981, no. 5814).

In disputes relating to transport contracts governed by the CMR, the plaintiff can take legal steps before the judge of the State of the place of destination of the goods. Art. 17 of the (more general) Brussels Convention of 27 September 1968, according to which the local jurisdiction already agreed by the contracting parties in writing, must be considered tacitly confirmed in all subsequent commercial relations, is not applicable in the present case (Tribunale Massa, 05/02/1988).

According to art. 31, par. 1, letter b) of the CMR, jurisdiction lies with the Italian judge in relation to an action of liability against a German carrier if the place of delivery of the goods is located in Italy (App. Milano, 18/03/1994).

Jurisdiction must therefore be established on the basis of art. 31 of the CMR. It allows to sue the defendant before the judge of the State in which the goods were taken over, not applying the criteria referred to in Italian Law 31 May 1995 n. 218, art. 2, par. 1, and in the 1968 Brussels Convention, art. 57, which expressly do not affect the applicability of multilateral conventions in specific matters (App. Trieste 11/09/2002).

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	Art. 32 CMR establishes that the annual or three-year period of limitation of the rights deriving from the transport contract remains suspended in the period between the filing of a complaint of a 'injunction to perform' nature, sent to	The one-year short period of limitation, pursuant to art. 2951 Italian Civil Code shall apply to the contracts entered into force before the entry into force of art. 2 of the Legislative Decree 29 March 1993 no. 82, converted into law 27 May 1993 no. 162, which raised the period of limitation to five years. The short term also applies to compensation for damages deriving from unjustified withdraw from the contract itself, as it is a contractual liability hypotesis	Art. 32 CMR, however, refers to the law of the state, whose judge is competent to decide the dispute, regarding the discipline both of the suspension and the interruption of the period of limitation.	Art. 2951 Italian Civil Code introduced the one-year short period of limitation. Article 2 of the Legislative Decree n. 82/1993 (L. no. 162/1993) raised the period of limitation to 5 years. Art. 3 of the Legislative Decree no. 286/2005

	the carrier and the reject of the same by the consignee.	(Cass. civ., III, 03/07/2014 no. 15231 https://sentenze.laleggepertutti.it/sentenza/cassazione-civile-n-15231-del-03-07-2014) Art. 3 of the Legislative Decree 21/11/2005 n. 286 repealed art. 2 of the Legislative Decree 29 March 1993 no. 82, which provided for a five-year term, restoring the annual term provided for by art. 2951 Civil Code. However, for the rights already arisen at the time of the entry into force of the Legislative Decree 286/2005, the five-year term continues to apply, in accordance with the principles of non-retroactivity of the law and of protection of legitimate expectations (Trib. Udine 27/08/2012 n. 1159 https://www.laleggepertutti.it/codice-civile/art-2951-codice-civile-prescr).	It also expressly excludes the suspensive effect of all complaints subsequent to the first one. Consequently, it must be considered that the aforementioned complaint produces not only suspensive effects, but also interrupts the period of limitation (Trib. Milano 03/06/1982). The exception of suspension of the period of limitation regarding to the actions deriving from art. 32.2 CMR, according to which the suspension follows the presentation of a written complaint and lasts until the carrier responds to the complaint and returns the documents, is an exception ascertainable 'ex officio', on the basis of evidence obtained (Cass. Civ. 24/11/2009, no 24680).	repealed art. 2 of the Legislative Decree no. 82/1993, restoring the annual term, provided by art. 2951 Civil Code. The annual period for rights arising from the transport contract, provided for by art. 2951 of the Italian Civil Code, also applies when different transport services are performed in execution of a single (mixed) procurement contract of transport services.

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	According to art. 31 CMR, in legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action before a court or tribunal of a contracting country designated by agreement between the parties and, in addition, a court or tribunal of a country where: (a) The defendant is ordinarily resident, or has his principal place of business or agency; (b) the place of receipt of the goods or the place designated for delivery is located, and it is not allowed to apply to other judges. Therefore, this article appoints different competent courts. But it is possible that the parties agree a single court or tribunal of a contracting country. In addition, art. 33 CMR allows the parties to include in the contract a clause conferring competence on an arbitration tribunal that will apply this Convention.	Art. 18 of the Italian Civil Procedure Code (general forum of natural person) assigns competence to the court of the place where the obligation arose or must be enforced, unless otherwise provided for by law. Article 19 of the same Code (general foum of legal person) assigns jurisdiction to the court where the legal person is located, unless otherwise provided by the law. Art. 20 of the same Code (optional forum for rights of obligation) also assigns the competence for rights of obligation to the court of the place where the obligation was incurred or must be enforced.	The "forum contractus" - which identifies the competence under art. 20 of the Italian Civil Procedure Code (c.p.c.) as an alternative criterion to that of the court of the defendant under articles 18 and 19 c.p.c. - shall be considered that of the place where the transported goods are taken over (Cass. civ., III, 15/07/2009, no. 16446 http://www.fog.it/giurisprud/ca-09-16446.htm). The court of the place of the receipt of the goods or where the defendant has his residence or place of business has the territorial jurisdiction for any claim for compensation against the carrier relating to the CMR (art. 31 CMR). (Trib. San Benedetto del Tronto, 06/12/2002).	It is possible to award a single court (or an arbitration tribunal) exclusively competent for the resolution of a CMR based case pursuant to an agreement between the parties or an arbitration clause. The CMR gives the parties the choice between several options based on alternative connecting factors.

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)

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

Pursuant to Art. 3 and 17 of the CMR, the carrier is liable for the acts and omissions of its employees and responsible agents and of any other person who has been involved by him to perform the transport. According to Italian law, the carrier is liable for the loss or damage of goods delivered to them, whether it depends on wilful misconduct or is the fault of auxiliaries, when such subjects have acted in the exercise of their functions (art. 1696, last paragraph, Italian Civil Code), without it being necessary to configure a "culpa in eligendo" of the carrier, but by virtue of a sort of "objective liability", according to which the behaviour of the auxiliary (which replaces the debtor in the performance of the service) is assessed according to the same criteria applicable to the conduct of the debtor (Civil Cassation section III - 04/04/2003, No. 5329). The carrier that has entrusted the execution of the transport to a third party, with whom he has concluded a sub-transport contract in his own name and on his own account, is responsible for the entire transport towards the shipper and the sender, since the sub-carrier acts as his auxiliary pursuant to Art. 1228 Italian Civil Code (Civil Cassation section III, 01/12/2003, n.18299); according to the sub-transport contract the carrier assumes the role of sub-sender; thus, in the event of loss of goods he may act for the sub-carrier's liability for damages, regardless of the fact that the sender has acted for damage against him or not (Cass., Judgment 12/12/2003 n. 19050). The recipient who has requested the re-delivery of the goods from the sub-carrier can act directly against the latter (Cass., 28 September 2009, n. 20756; Civil Cassation, section III, 30.01.2008 n. 2094) as beneficiary of the transport contract, that is a contract in favour of a third party, while this action is precluded to the non-recipient sender. Therefore, non-fulfillment by a third party, which the carrier uses to perform the transport, does not constitute a just cause for the contractor's exemption from liability, since, pursuant to art. 1228 of the Italian Civil Code, he is also responsible for the fact on the part of his auxiliaries, unless he can demonstrate a fortuitous event or force majeure, also with regard to their behaviour (Civil Cassation section III - 12/03/2010, n. 6053) and without prejudice of his right to recourse against them (Monza Court section I, 14/03/2019, n.599). In the case of violation of traffic safety rules, according to art. 7, Legislative Decree no. 286/2005, the carrier is liable only for personal wilful misconduct or gross negligence (Court of Cassation, section II, 1 March 2018, no. 4866).

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 responsible for total or partial loss of the goods, for any damage which occurred between receipt and redelivery of goods and of delay in redelivery (art.17, paragraph 1, CMR). Art. 17, paragraph 2, provides that the carrier is exonerated from liability if the loss, damage or delay is due to the fault of the sender or recipient, is due to an order of either of these subjects not connected with a fault of the carrier, to an defect of the goods or to circumstances that the carrier could not avoid and the consequences of which he could not remedy. Therefore, there is a presumption of liability of carrier for the damage to goods, which can be overcome only by the proof, the onus of which is on the carrier, that the damage is due to a cause not attributable to him, by unforeseeable circumstances or force majeure (Court of Sec. II - Bologna, 13/03/2012, n. 755). The carrier's proof is facilitated by a series of presumptions: if he proves that, given the actual circumstances, the loss or damage is due to one or more of the particular risks provided for in Article 17 (4) , it is assumed that the damage is not attributable to him. The burden of proof that the loss or damage was caused by facts that fall within the scope of the risks that are borne by the sender, lies with the carrier (Article 18, paragraph 1), but the position of the latter is made less burdensome by a presumption of non-liability (Art.18, paragraph 2), according to which the carrier is not requested to prove the specific fact that led to the loss or damage: the presumption of non-liability operates every time, due to the particular circumstances in which the loss or damage has occurred, it is possible that the damage is due to one of the risks referred to in art. 17, paragraph 4. The doubt to the impact of one of the risks mentioned in art. 17.4 is enough to exclude the automatism of the carrier's imputation, in the twofold sense that: a) the (founded) doubt in itself frees the carrier from the presumption of liability; b) to make the general criterion for imputation of liability operational again, the counterparty must demonstrate that the damage was not caused by one of the "risks" indicated in the fourth paragraph of art. 17 (see Civil Cassation 03/10/1997 n. 9667; Civil Cassation, section III, 07/04/2005, n. 7258). Under Italian law, the carrier is required to performs its duties according to the conditions established in the contract or, failing that, according to use, and he responds both in the event that the goods undergo a decrease in weight or measure that exceeds the so-called natural loss (art. 1695 cc), both in the case of impediment or excessive delay at the beginning or continuation of transport service (art. 1686 cc), and in the event of loss or damage of the goods delivered for transport (art. 1693 cc), unless one of the situations in which the liability of the carrier is excluded pursuant to art. 1693, paragraph 1, of the Italian Civil Code, (that is unforeseeable circumstances, nature or defects of items or their packaging, caused by the sender or the recipient) is proven. While Art. 1683 determines the imputation of the harmful effects on the carrier in the case of loss or damage of goods, according to Articles 17 and 18 of the CMR the doubt on the causal impact of "risks" pursuant to art. 17, paragraph 4, is sufficient to exclude this automatism. Pursuant to art. 1694 c.c. the exceptions set out in the transport contract in favour of the carrier are valid, but the clause that excludes liability in the event of theft tout court was deemed contrary to public order. In the case of transport of goods by road, a part of which is carried out by sea by loading the vehicle onto a ferry boat, the transport must be qualified as a mixed contract for the transport of goods by road, by means of different vehicles, subject to the CMR pursuant to its art. 1; it follows that it is incumbent on the carrier to prove that the damage occurred as a result of one of the excepted dangers, as defined by the Brussels Convention on the bill of lading of 1924, since it is incumbent on him to prove that the damage came from event which he is not held to answer for (Appeal Brescia, 1 June 2001).

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	*Art. 28*	In accordance with Art. 2051 of the Italian civil code (c.c.), the custodian is liable for the damage caused by goods in its custody, unless he proves a break of the causal link, due to the occurrence of an unforeseeable event, so-called "unforeseeable circumstances". The injured party has to prove the causal link between the good and the injurious event, while the defendant has to prove the fortuitous event, that is an external factor capable of interrupting the aforementioned causal link (see, among others, Cass. 20427/2008), having the characteristics of unpredictability, exceptionality and inevitability which can also be constituted by the fact of the third party or the injured party himself.	In order to disharge the custodian from this strict liability, which is independent of the custodian's fault (see Cassation, 10 March 2009, no. 5741), the fortuitous event must be unpredictable and inevitable. Jurisprudence distinguishes between unexpected accident and autonomous accident; the latter is intended as an external factor, which in itself caused the event autonomously, so that damage appears to be the exclusive product of the fortuitous event; in the so-called fortuitous accident, on the other hand, the good is the etiological factor of the harmful event due to a totally exceptional and unpredictable element or fact, with respect to which, in any case, res was a mere occasion for damage (Cass., 25 20427 of July 2008;	According to the relationship of custodian, the custodian's liability for delivered goods is objective, thus the custodian must be held responsible for the fact that damage is caused by goods under his physical power. CMR provisions apply regardless of the nature of liability and type of compensation actions brought by the injured party: the carrier can always avail itself of the provisions which exclude its liability or limit the indemnities due (art.28).

				Cass. 2284/2006 and Cass. 15429/2004).	
8.5	NO				
8.6	YES	Pursuant to art. 13 CMR, if the goods do not arrive at their destination, the recipient "is authorized" (not obliged) to claim his rights deriving from transport (paragraph 1) against the carrier, provided that it has paid the amount of credits resulting from the waybill (paragraph 2). Article. 41 CMR does not refer to the rights freely exercisable by parties, such as the aforementioned recipient's right (Cass. Civ. 10-04-2015, n 7202). The annual prescription of the credit of the forwarder against the carrier, consequent to the inclusion of a cash-on-delivery/cheque clause in the contract and to the failure of carrier to collect the price of the goods delivered, the course of which starts to run after the third month from the conclusion of the contract, is not interrupted or suspended ex Art. 32 C.M.R. if there has	According to Art. 1689 of the Italian Civil Code, the recipient can exercise the rights arising from the carriage contract from the moment in which, after items arrive at their destination or at the deadline in which they should have arrived, the recipient requests their delivery from the carrier. The recipient cannot exercise the rights arising from the contract if he does not pay costs and cash-on-delivery/cheques which are due on the goods (Art. 1689 paragraph 2). The carrier that performs the delivery without collecting credits or cheques which are due on the goods, or without requiring the deposit of the disputed amount, is responsible towards the sender for the amount of the cheques due (Art.1692). Moreover, in accordance with Art. 1683 the sender must indicate the precise nature of transported goods to the carrier.	The carrier who, brought to court by the sender, disputes the legitimacy of the redelivery request of goods by the recipient, has to prove both it and the consequent loss of the right to dispose of the goods by the plaintiff, pursuant to Art. 1689 civil code (Cass. 4 October 1991, n. 10392). Both, in domestic law and in CMR, the criterion for identifying the holder of the right to insurance compensation, in the event of loss or damage to the load, is that which takes into account the incidence of damage resulting from these events. The sender who asks the carrier for compensation related to the damage suffered as a result of loss of goods transported, has the burden only of proving the loss of the load and the value of it, but not of having compensated the recipient for the non-arrival; it	Pursuant to Art. 1687 of the Italian Civil Code, the carrier has the duty to notify the recipient of the arrival of goods transported or of their non-arrival in the event of loss during the voyage. Therefore, the carrier, summoned by the sender for damage or loss, has the burden of proof that the recipient has requested the delivery of goods in accordance with and for the purposes envisaged by art. 1689 civil code. CMR, Art. 22, No. 1, provides that the sender, in delivering dangerous goods for the transport, has the obligation to report to the carrier the exact nature of the danger they present (fire, explosion) and possibly to indicate to him the precautions that must be taken to avoid accidents. CMR also provides (Art. 6. 1 lett. f), that the consignment note indicates international

		been a previous request concerning the credit (even if not made in writing) and this request has already been rejected in writing (Cass. 29 January 2003 n. 1272).		will be up to the carrier to prove that the sender had already received from the recipient the price of goods which was then lost, and that the recipient did not ask for the return (CASS 12 January 2018 n., 702 Civil Cassation section III - 13/12/2010, n. 25110.	name of those goods. If it does not appear on the consignment note, the sender or recipient can prove that the carrier knew the exact nature of the danger by other means. Therefore, according to a part of doctrine, Art. 22.1 of CMR introduces an additional exemption rule for the carrier.

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 circumstances which, pursuant to art. 17 paragraph 2, the carrier "cannot avoid" and "the consequences that it cannot prevent" are considered a "fortuitous event": therefore, the carrier must prove that the event was caused by a specifically identified, inevitable and unpredictable cause, while damage coming from an unknown cause falls on the carrier liability. According to national jurisprudence, a "fortuitous event" is an event unrelated to the persons and means used by the carrier, determined by nature or by third party conduct, which precludes the carrier from delivering cargo in the conditions in which he received it. The inevitability was recognized by courts in the case of robbery, due to the presence of violence or threat to people (Cass. 7 October 1996, n. 8750; Cass. 14 July 2003 n. 10980), unless the carrier's organizational deficiencies facilitated the robbery itself, as in the case of an unnecessary stop or detour carried out by the carrier or in the presence of a missing lock of the doors while the vehicle is stopped at a level crossing (Trib. Verona 3 October 1994). Pursuant to article 1693 of the Italian Civil Code the presumption of liability that is laid against the carrier can be overcome only by specific proof of the derivation of the damage from an identified event that is completely extraneous to the carrier itself, considering it a fortuitous event or as force majeure, which do not automatically occur in the case of robbery , also requesting that, in the specific case, robbery with violence and threat to the goods being transported appears unlikely and, in any case, absolutely unpredictable and inevitable (Court of Cassation, civil section VI, 20 June 2016, n. 12700), taking into account the circumstances of the specific case and the possible suitable measures to eliminate or mitigate the risk of load loss (Court - Latina, 10/09/2012). On this basis, the theft of transported goods may not be considered as a "fortuitous event" or "force majeure", if the removal of cargo takes place in a manner and in circumstances of unpredictable time and place, based on a prudent assessment to be carried out with the qualified diligence referred to in Art. 1176, paragraph 2, of the Italian Civil Code, and cannot be avoided, in light of all the circumstances of the specific case and of the possible suitable measures to eliminate or mitigate the risk of loss of load (Civil Cassation section III, 17/01/2012, n .553). To have a fortuitous event, as required in

article 1693 of the Italian Civil Code, it is not sufficient for an occurrence (such as robbery) to just appear unlikely, but it must also be unpredictable, based on a prudent assessment to be carried out, in the case of a professional carrier, with the qualified diligence referred to in Article 1176 of the Civil Code, paragraph 2. The event must also be absolutely inevitable, taking into account all the circumstances of the specific case and the possible suitable measures to eliminate or mitigate the risk of loss of load. Based on Art. 17 CMR and Art. 1693 of the Italian civil code, the robbery excludes the carrier's liability, if unpredictability and inevitableness can be ascertained, in a concrete way, with reference to conduct of carrier and/or its employees even before the offense was committed, to establish if they implemented or adopted "ex ante" all the precautions imposed by the specific duty of care requested by Art. 1176 c.c. (Court - Ivrea, 06/04/2006). In the event of theft, the carrier is not exonerated from serious negligence for the fact of having entrusted surveillance to a professional company (Cass. 16 February 2000, n. 1712). However, clauses that establish "unforeseen circumstances presumptions" for events that normally, in relation to the means and conditions of transport, depend on unforeseeable circumstances (art.1694 of the Italian Civil Code) are valid. When the carrier claims fraudulent activity of third parties, (which has led him into making an error regarding identification of the real recipient and place of delivery) as a reason for exemption from liability in delivering goods to a person other than the recipient, the presumption of liability can be overcome only by the positive demonstration that the error, determined by artifice or deception, could not be avoided with ordinary diligence only and with the punctual execution of contract, which includes, among others, prompt notice to the recipient (pursuant to the second paragraph of Art. 1687 of the Italian civil code), as well as the obligation to immediately request instructions from the sender in the event of impediments , even temporary, in the execution of transport (Art. 1686 Italian Civil Code); this is because the lack of diligence of the carrier, person damaged by the crime of fraud, excludes the requirement of unpredictability and inevitability of the event that is necessary to overcome presumption of carrier's liability (Court of Cassation, Section III, judgment of 14 July 2003, No. 11004). Italian case law excludes that robbery integrates a fortuitous event in all those circumstances in which the carrier has in some way operated without the due diligence, thus facilitating the work of criminals. With reference to cargo of particularly high value (jewels, precious goods, etc.) the Supreme Court excluded the exoneration of carrier liability, where the vehicle containing the load was parked during the night at the home of the driver, in a case when the armed robbery by three criminals occurred at the time of departure at three in the morning, because the "behavior of the carrier in the organization of transport had not been in accordance with the degree of diligence and prudence imposed by the relevant value of the goods (Court of Cassation, sentence no.28612 of 14.11.-20.12.2013). The carrier must do everything that is due in relation to the characteristics of the concrete case (value of the goods, mode of transport, itinerary) to avoid the risk of a robbery if the event does not appear unpredictable; in such an eventuality (unpredictability of the event) he shall be exempt from liability if he has adopted precautions that are insufficient only for the ineluctability of the event, or if it can be in any case excluded that the failure in adopting adequate precautions has facilitated the event. "(Court of Cassation, No. 4236 of 23 March 2001).

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

According to Art. 17.4, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one more of the following circumstances:(a) Use of open uncovered vehicles, when their use has been expressly agreed and specified in the consignment note;(b) The lack of, or

defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;(c) Handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee;(d) The nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;(f) Insufficiency or inadequacy of marks or numbers on the packages;(g) Carriage of livestock. Notwithstanding that the burden of proof is on the carrier that the loss, damage or delay is not attributable to him, even the mere doubt on the causal impact of the risks mentioned in Art. 17.4 is sufficient to exclude the automatism of the imputation in the twofold sense that: a) the mere (founded) doubt frees the carrier, and b) to restore the operation of the general automatic criterion for imputation of liability, the interested person must demonstrate, not that the damage was caused by the carrier, but that it was not caused by one of the aforementioned risks (Civil Cassation section III - 07/04/2005, n. 7258). Although from Art. 18.1 CMR the burden of proof lies with the carrier that the loss or damage depended on facts that fall within the scope of the risks borne by the sender, in accordance with Art. 18.2 CMR, there is a presumption of non-liability of the carrier when, due to the particular circumstances in which the loss or damage occurred, it is possible that it was caused by one of the preordained risks to avoid, for example, a suitable arrangement of the load (Civil Cassation, section III, 07/08/2000, n. 10360).

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	In addition to compensation for total or partial loss of goods, calculated on the basis of Art. 23, paragraphs 1, 2 and 3, CMR, the carrier is required to reimburse, in whole or in part, customs duties and other expenses incurred during the	Pursuant to Art. 1696 of the Italian Civil Code, the damage resulting from loss or harm is calculated according to the current price of the goods transported to the place and time of delivery. The compensation due from the carrier cannot exceed 1 euro for	In the event of loss of a good whose value has not been indicated and which has no current price, the damage must be calculated not in accordance with Art. 1696 of the Civil Code, but with reference to the actual value of the item transported	The current price of the lost or damaged goods is that which appears on the basis of stock exchange or market price lists in the market closest to that of the delivery. It must be calculated as objective values, also possibly referring to the original price,

		transport of goods (Court of Bolzano May 17, 2018 n. 616). In applying Art. 23, compensation must cover both the consequential damage and loss of profit (Art.1223 of the Italian Civil Code) corresponding to the failure to collect the price agreed with the buyer for the sale of the lost goods. With regard to ancillary costs, in the case of a sale carried out using international transport, it must be held, from common experience, that there are in fact accessory costs that must be compensated, which can be liquidated at 10% of the amount referred to in the invoices, an equitable evaluation in accordance with Art. 1226 of the Civil Code. Art. 27 CMR recognizes an interest of 5% on an annual basis from the day of the claim presented in writing to the carrier or, failing that, from a judicial request. Monetary revaluation is not due (Art.23.4) (Rovereto Court 25 October 2012).	each kilogram of gross weight of the goods lost or damaged in national transport and the amount referred to in Art. 23 paragraph 3 of the CMR in international transport. The aforementioned limit cannot be waived in favour of the carrier except in cases and manner provided for by special laws and by the applicable international conventions (Art. 1696, paragraph 3).	(Civil Cassation section III, 23/01/1985, n.289). To define the current price, the judge can legitimately refer to the details of the invoice issued by the sender (seller) to the recipient (buyer), since it corresponds to a simple presumption that it is the market price, when it concerns goods that have a price resulting from a market list or generalized contracts (Civil Cassation section I, 06/08/2015, n.16554).	increased by insurance and transfer costs. In the absence of these criteria, a judicial equitable evaluation is carried out. Monetary revaluation is allowed in the case of a debt of value (Cass. January 30, 1990). The provisions of Art. 1696 apply only in the case of loss or damage to the goods, while the damage from delay must be calculated in the light of the general legislation, less favourable for the carrier, as laid out in Art. 1223 Italian Civil Code.

10.2	YES	The expression "other expenses incurred", contained in Art. 23 CMR (translation from the French "autres sommes dèboursèes à l'occasion du transport"), has been interpreted as inclusive of excise duties (Appeals Court of Turin sect. III, 22/02/2019, n. 359).	Damage identification criteria, as foreseen in Art. 1696 and international conventions, where applicable, limit assessment of the consequential damage, but do not exclude refund of missed earnings (court of Bari, 31/08/2015, n. 3696), the profit, that is, which the entitled person was counting to make on the transported goods, as long as this is an immediate and direct consequence of the vector's failure to comply with their obligations. Article 1696 has recently been amended by Article 30-bis, paragraph q, letter a), of Italian Decree-Law No 152/2021 (converted into Law No 233/2021), which has confirmed applicability of these limits to road transport alone, while for international multimodal transport has introduced lower limits (EUR 3 per kilogram of gross weight)"	Based on an outdated jurisprudence, damage settlement, as per art. 1696, imposes the evaluation of actually verifiable data (current price of goods in a specific place at the time of delivery), with no possibility of resorting to instances deriving from a violation of the creditor's interests*, such as ensuring damage and missed earnings: later, however, the Court of Cassation pointed out that Art. 1696 does not preclude refundability of further damage ex Art. 1223 c.c. (Cass 28-10-80, n. 5793).* *A vector's liability for damage deriving from loss or destruction of transported goods falls within pre-established limits of value, except in the case of damage caused intentionally, or by serious fault; the burden of proof lies on the consignor claiming a higher refund, equal to the full value of the goods transported (Civil Cassation, section III - 12/09/2013, n. 20896)*	According to the general principles foreseen by art. 1223 of the civil code, the application of objective criteria of damage assessment, deriving from loss or destruction of goods, does not exclude refundability of possible, further damage, identified as missed earnings, that is to say, the profit deriving from the transported goods which the consignorfailed to make, as long as this is an immediate and direct consequence of the vector's failure to comply with their obligations.

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)

Liability of carrier for damages deriving from loss or harm to the transported goods is limited within pre-established value limits, except in the case of damage caused by wilful misconduct or gross negligence; the burden of proof lies on the sender who invokes compensation to a greater extent, equal to the entire value of the goods (Civil Cassation section III - 12/09/2013, n. 20896). In the event of loss or damage of goods transported by road, for the purposes of overcoming the carrier's liability limit, it is necessary for the trial judge to ascertain in a concrete way (taking into account all the circumstances of time and place, value of the goods and any other useful elements of judgment to classify the carrier's fault) that the event resulted from gross negligence on the part of the carrier or its employees and collaborators (including the sub-carrier) or from mindful behaviour of this that, even without any will to harm others, operates with extraordinary and inexcusable imprudence and negligence, omitting not only the average diligence of reasonable care, compared to the professionalism of the service to be performed, but also without that minimum degree of diligence observed by all (Court of Cassation, section III, judgment of 13 October 2009, n. 21679).

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 states that "The carrier shall not be entitled to avail himself of the provisions (...) which exclude or limit his liability or which shift the burden of proof if the damage was caused by his 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. ". Problems in interpretation are due to the different expressions used in the official texts (French and English) concerning the expression " wilful misconduct ": it does not coincide with the concept of "fraud", as the term, wilful misconduct, correspnds to the domestic notion of «fault with prediction». The doctrine believes it is possible to overcome this difficulty by an autonomous interpretation of the rule in the context of the Convention, considered as a specific legal system relating to the international transport of goods by road. According to the domestic legal principle following which, in the field of contractual liability, the legal consequences of gross negligence are treated in the same way as those of wilful misconduct, in the international transport of goods the carrier loses the benefit of limitation of liability in the event that a serious fault on his part or his employees and collaborators is ascertained (Civil Court Section III, 16-12-2005, n. 27715; Civil Court Section III 07-10-2008, n. 24765) which is to be considered equivalent to fraud (Civil Cassation September 16, 1980, no. 5269). For the proof of gross negligence, that excludes the compensation limit, it is not sufficient for the carrier - or its employees or auxiliaries - not to have overcome the presumption of fault according to Art. 1693 of the Italian Civil Code, nor that there has been an omission of the so-called average diligence of reasonable care, but it is necessary to ascertain that the event resulted from the conscious omission of that minimum degree of diligence that all observe in a concrete way.

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	YES	Never	A robbery which took place while the vehicle was stopped in front of a level crossing road is not considered inevitable if the driver had not locked the lock. On the contrary, the inevitableness of the event was considered proven in a case in which the robbery had been carried out by several criminals with the help of a vehicle with which they had forced the driver to stop the truck in motion, threatening him with a weapon (Court of Cassation, judgment no.18235 of 28 November 2003; Court of Appeal of Bolzano, 21/07/2018, (hearing 11/07/2018, dep. 21/07/2018), n.92) .
Theft during parking	YES	Never	The theft of the vehicle left by the driver for a prolonged stop (an hour and a half) during the night in an unattended area, does not constitute an unforeseeable and inevitable event (Court of Milan, 09/04/2001). The professional carrier, while enjoying wide autonomy in choosing the time, method and route of transport, is still required to make choices to minimize the risk of loss of load; thus the decision to leave the load in an unattended area at night is not unquestionable, but constitutes strongly negligent behaviour, given that the risks of theft and robbery are typical risks of road transport , against which companies are required to take precautions, using the necessary diligence. On this point of view, the fact that the driver had to observe a rest period, expressly prescribed by law, does not matter given that the organization of the journey must be in line with the professional duty of carrier and, therefore, with the plan to park the vehicle in guarded premises (Court of Appeal Section II - Florence, 18/10/2019, n. 2487). Leaving a loaded truck unattended for a considerable period of time (over two hours), without the insertion of any alarm system, constitutes a serious fault that causes the carrier to lose the benefit of liability limit (Court of Milan 13 March 2013; Court of Verona, 22/02/2013; Court of Latina, 10/09/2012). The fact that the vehicle left unattended was equipped with an anti-theft device does not reduce the level of negligence (Court of Milan, 13/07/2011). Thus, the fortuitous event was excluded in an event of robbery consumed at night in an isolated rest area, where the driver - who had begun his journey in an inadequate physical condition - decides to stop shortly after the start, due to fatigue and sleep (Court of Cassation, No. 17398 of 8 August 2007; always on the subject of stationary and unattended trucks at night in

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

			isolated areas, see Court of Cassation, No.14397 of 21 December 1999; No.9439 of 21 April 2010; Court of Cassation, No.16554 of 6 August 2015). The exemption of "fortuitous event" was also excluded with reference to a robbery concerning a "container" of the carrier parked in an unguarded area during the night (Court of Cassation, No. 7533 of 27 March 2009).
Theft during subcarriage (for example an unreliable subcarrier)	YES	Never	The carrier who has lost the load is liable not only for its own wilful misconduct or gross negligence, but also for its sub-carriers, who have acted in carrying out their functions. In the event of malicious theft of the load by the sub-carrier, the liability of the contractual carrier is not traced back to "culpa in eligendo", which could be overcome with the proof of having done everything possible, according to professional diligence, to verify the regularity and reliability of the sub-carrier in charge, but derives from the evaluation of the psychological element of malice in the behaviour of those who have stolen the load in carying out their functions, carried out on behalf of the carrier itself. According to domestic case law, the fact that the contractual carrier has verified specifically, according to professional diligence, the regularity and reliability of the sub-carrier in charge of transport is not enough to prove that the theft of the load was completely unpredictable and inevitable (Ravenna Court, 23/04/2019, n.414; Monza Court section I, 20/04/2016, n.1029). Even the Court of Cassation has clarified that the carrier responds for the loss or damage of goods delivered to him, due to the wilful misconduct (or fault) of employees, without the need to configure his fault as a "culpa in eligendo"; pursuant to Art. 1228 of the Italian Civil Code this is a sort of objective liability, in which the behaviour of the auxiliary is assessed according to the same criteria applicable in the case of direct fulfilment of the obligation by the debtor (see: Cassation, Section 3, 04.04.2003, n. 5329). The carrier was held responsible for the loss of the goods caused by the malicious act of an employee who, although resigned, acted in the name and on behalf of the carrier, agreeing with the latter the methods of loading on third party vehicles (Cass. 11 May 1995, No. 5150).
Improper securing/lashing of the goods	YES	Sometimes	In accordance with Art. 17.4, CMR, the carrier is not liable for loss or damage that are consequence of facts that may occur during transport, if the load is not secured in an adequate way with regard to the type of vehicle requested by the sender, or to the nature of the goods and their packaging (Civil Cassation section III - 30/01/2009, n. 2483) and the cargo handling operations were carried out by the sender or persons chosen by him (Milan Court section XII, 05/06 / 2015, No. 6906). However, when the loading of the vehicle was carried out by the driver, in the event of the fall of goods transported while the vehicle is in movement, the presumption of non-liability provided for by the CMR does not apply (Civil Cassation, section III, 30/01 / 2009, No. 2483). In the case of perishable

			items to be transported with a particularly equipped vehicle, pursuant to Art. 18, no. 4 of the CMR, the carrier has the duty to check the load arrangement even when this has been carried out by the sender and, unless the latter has imposed certain arrangements or methods of loading, cannot make use of the provision of Art. 17, no. 4, lett. c) (Civil Cassation Section III, 04/11/1993, no. 10889). The duty to cover load with tarpaulins falls primarily on the carrier, if it has not been agreed, pursuant to Art. 17 CMR, to use open vehicles, without awning. Therefore, the spontaneous collaboration of the sender to cover the load does not imply exemption from the responsibility of the driver, who has to take care of the covering itself in any case and, above all, when it detached during transport (Court Bolzano section I, 17/05/2018, n.616). Pursuant to Art. 17, fourth paragraph lett. d and art. 18, fourth paragraph of CMR, in the case of transport of perishable goods, carried out with a vehicle equipped to protect them from temperature changes, to be exempted from liability in the case of bad condition of goods on delivery, the carrier must demonstrate that for the entire duration of the trip the temperature had not changed (Cass. 2 October 2003, n. 14680).
Improper loading or discharge of the goods	YES		The carrier is not liable for damage resulting from a defect in the packaging of goods loaded at the sender's and by the "warehouse worker" of the sender himself, and unloaded by the recipient, when no other relevant circumstances have been ascertained such as the fact that during transport, accidents or other specific events occurred that may have damaged the goods (Court of Milan, 06/06/2015, No. 6906). If it emerged that the carrier took charge of the goods without documenting checks carried out on it, both at the time of loading and unloading, it must be considered that goods have been lost for unknown reasons or that they have been delivered to a person not entitled to receive them: in both cases, a serious fault of the carrier is configurable, for which the limitations of liability pursuant to Art.1696 of the Italian Civil Code (Monza Law Court section I, 26/02/2018, n.556) are not applicable.
Temporary storage	YES	Never	The "made available to" provided for by Art. 1687 of the Italian Civil Code is an operation consisting in grounding the goods transported, to which normally the carrier is obliged to do, which can, moreover, be conventionally entrusted to the recipient, or constitute the object of a contract - connected or complementary to transport - with which the carrier assumes the obligation to perform unloading operations of transported goods with organization of necessary means and management at its own risk, when such operations are so complex to require the use of extraordinary means, which the carrier normally does not have (in the case, a large sized crane, to be anchored with special precautions and operated by specialized personnel), and must be completed with the arrangement of the item transported to a place determined (Civil Cassation 31/05/2005, No.11598).

Reload/transit	YES	Never	In the case of transport by road, a part of which is carried out by sea loading the vehicle onto a ferry, the transport must be qualified as a "mixed contract" for road transport of goods, by means of diversified vehicles, subject to CMR pursuant to Art. 1; it follows that it is incumbent on the carrier to prove that the damage occurred as a result of one of the excepted perils, as defined in the Brussels Convention on bill of lading, since it is incumbent on him to prove the damage is derived from a non-attributable event (Appeal Brescia, 1 June 2001). The limitation of liability is not applicable to damages that occurred in the execution of contracts related to the contract of transport (Court of Cassation 31 May 2005, No. 11598).
Traffic	YES	Never	
Weather conditions	YES	Never	Carrier liability is excluded in the event of damage resulting from bad weather, even if foreseeable, provided that it is inevitable because sudden (Cass. January 24, 1957, No. 241).
Overloading	YES	Never	
Contamination during / after loading	YES	Never	Pursuant to Art. 18, no. 4 of the CMR, in the case of perishable goods to be transported with a particularly equipped vehicle, the carrier has the obligation to check the arrangement of the load even when this has been carried out by the sender and, unless the latter has imposed certain arrangements or methods of loading, cannot make use of the provision of Art. 17, no. 4, lett. c (Civil Cassation, 04/11/1993, No. 10889).
Contamination during / after discharge	YES	Never	

13. Successive carriage (art. 34 – 40)

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

According to the prevailing case law tendency (Cass. No. 4728 of 1992; Cass. N. 698 of 21/01/1995, Cass. 16 May 2006, n. 11362) Art. 34 CMR, which foresees joint liability for all carriers engaged in transport, is applicable only when all subsequent carriers are committed on the basis of a single contract (cumulative transport, Art. 1700 of the Italian Civil Code); in this case, all carriers are jointly and severally liable to the sender for the execution of the contract, from the place of origin to that of destination (Article 1700 of the Italian Civil Code). According to Cass. 21/03/2011, No.6365, "on the basis of Art. 34 of the CMR, the second carrier adheres to the transport contract with its acceptance of the goods and the waybill". In a different case, where the contracting carrier makes use of another carrier, with whom he enters into a separate sub-transport contract, the joint and several liability of the different carriers does not exist, but it is the contractual carrier that is also liable towards the sender for the work of the sub -carrier as his auxiliary in the performance of contract (Cass. 17/04/1992, No. 4728; Cass. 16/05/2006, No. 11362); however, the recipient can act against the carrier to whom he has

requested the delivery of goods (actual carrier) ex Art. 1689 Italian Civil Code (Cass. January 26, 1995, No. 931). The action proposed against the actual carrier does not interrupt the prescription against the contractual carrier (Cass. 10/01/2008, No. 245). The contractual carrier who makes use of the work of another carrier, with whom it concludes a contract in its name and on its own account, assumes the role of sub-sender in the context of a sub-transport contract and, therefore, in the event of loss of property, can claim the subcontractor's liability for damages, regardless of whether the sender has acted for damages or not against him (Cass. April 17, 1992 No. 4728).

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

The carrier who is sued for a fact committed by another, can bring an action against the other carriers, individually or cumulatively. If it appears that the harmful event occurred in the course of transport carried out by one of the carriers, this carrier is liable for full compensation; otherwise the compensation is required from all carriers in parts proportional to the routes covered, excluding those carriers that can prove that the damage has not occurred on their route (Art. 1700, paragraph 2, Italian Civil Code).

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

Subsequent carriers are carriers who, in the cumulative transport referred to in Art. 1700 of the Italian Civil Code, jointly and severally undertake towards the sender, with a single contract, to transport goods to the place of destination, operating every one of them for a section of the route. On the contrary, the substitute carrier is the carrier that performs the service on behalf of the contractual carrier in a transport with reshipment (according to Art. 1699 of the Italian Civil Code), that is a contract in which the carrier undertakes to conclude, in its own name and on behalf of the sender, one or more transport contracts to get the goods to their final destination, beyond the route performed with their own means (Cass. 7 February 2006, No. 2529). In a different way from the cumulative transport, in this case the joint and several liability of the carrier and the sub-carrier towards the recipient is excluded (Cass. 7/08/ 1996, No. 7247). In transport with reshipment (Art. 1699 Italian Civil Code), the carrier, besides committing to carrying out part of the transport with his own means, is obliged to conclude in his own name and on behalf of the sender one or more contracts of transport so tat the goods arrive at destination (Court of Cassation, Sect III - 07/02/2006, no. 2529). In this case, the carrier/forwarding agent (Art. 1737 Italian Civil Code) is only responsible for the obligation to conclude, in its own name and on behalf of the principal, a transport contract, not however assuming the risk associated with the execution of the transfer beyond the section of its direct competence. So, in transport with reshipment, the carrier does not assume the charges and responsibilities of the entire transport, but only those relating to the route actually traveled by him, assuming towards the sender the obligation to stipulate a further transport contract with one or more subsequent carriers, who respond directly to the sender (Cass. 7 February 2006, m. 2529).

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	Italy has not ratified the protocol	Art. 1 paragraph 909 of Law 27 December 2017, no. 205 envisages the obligation of electronic invoicing for sale of goods and services carried out between residents and people living in the state, using the exchange system, with the decree of the Director of the Tax Authority no. 89757, 30 April 2018. Technical rules were established for the issue and reciept of electronic invoices, as well as for the electronic transmission of data on transfer of goods and cross border services and for the implementation of further provisions referred to in Art. 1, paragraph 6 bis and 6 ter of DL 5th August 2015, no. 127. See also art. 199, co. 8 ter, legislative decree No 34/2000 as emended by law N0 77 of 17 July 2020.	Tax Authority, opinion of 4th April 2019 no. 100.	The Italian Tax Authority, while believing that the correct proof of transport is the CMR transport document, admits that in the absence of this it is possible to use any other alternative proof, including electronic documents. In the recent opinion no. 100, 2019, the Authority clarified that the transport document includes electronic CMR signed by sender, carrier and recipient and made availabile in PDF format using a platform shared between the sender and the carrier. In any case, this document is not an electronic document as it is not signed electronically.

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?

Italy does not ratify CMR Protocol

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