CMR Country report Czech Republic

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Česká společnost pro dopravní právo

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(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	Art. 4: The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.	Section 9a of Act No. 111/1994 Sb. enacted some provisions of the CMR Convention also for the domestic carriage of goods by road in the Czech Republic. This applies also to Article 4 of the CMR Convention. The actual application of the said section 9a in the Czech Republic is still somewhat contentious and the statutory provisions so far have not been interpreted in any judicial proceedings in the Czech Republic. According to section 9a of Act No. 111/1994 Sb.: The provisions on the conclusion and consummation of the contract of carriage, the carrier's liability, the claims and actions and the provisions relating to carriage performed by successive carriers (CMR 31) shall apply	Judgment of the Czech Supreme Court ("CSC") of 28/6/2010 in case No.23 Cdo 5051/2009: The consignment note under Article 4 of the Convention on the Contract for the International Carriage of Goods by Road, published in the Collection of Laws by Regulation No. 11/1975 Sb. (the "CMR Convention"), does not constitute a contract of carriage but rather a document (confirmation) that the contract of carriage has been entered into. According to Art. (9)(1) CMR, the consignment note, in the absence of evidence to the contrary, is the prima facie evidence of the making of and the contents of the contract of carriage, which constitutes a rebuttable presumption (a	The exection of the contract of carriage under the CMR Convention does not need to be established by a CMR consignment note; other relevant evidence, such as carriage order and confirmation, is sufficient.

		by analogy in the domestic carriage of goods by road to the contract of carriage, tthe rights and obligations relating to carriage, the compensation for loss or damage, and the responsibility of individual road carriers in the carriage operation performed jointly by several carriers.	presumption that is taken to be true unless proved otherwise, c.f. s.133 of the Czech Code of Civil Procedure), both about the conclusion of the carriage contract and about its contents. The consignment note is therefore a proof of the contents of the contract of the carriage, and a proof of the identity of the carrier who entered into the carriage contract with the sender, in the absence of proof that the actual content of the carriage contract (the terms and conditions agreed) differ.	

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

Yes/No	Convention	National law	Landmark cases	Clarification
YES	Nothing prevents the parties to the contract of carriage from agreeing to apply the Convention in a contract which otherwise it would not be subject to.	Nothing prevents the parties to the contract of carriage from agreeing to apply the Convention in a contract which otherwise it would not be subject to.	Judgment of the District Court in Plzeň-město of 4 October 2012 in case no. C 32/2018; published in Právo v přepravě a zasilatelství, issue No. 4/2020, p. 19 (Walters Kluwer).	A conclusion may be inferred from the judgment that the application of the CMR Convention that is based on the contractual arrangement that extends its application to circumstances in which it otherwise would not apply, is permissible. In the case at hand, the parties agreed to apply the CMR Convention to multimodal transport

				from Pilsen, CZ to Riga, Latvia with a transhipment on vessel.

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	Article 1(4)(a): Carriage under the terms of international postal convention.	Act No. 29/2000 Sb., On Postal Services Under section 5, through the postal contract, the postal operator agrees to convey a sender's postal packet or a cash amount from the post collection point in the agreed manner to the recipient at the indicated address, while the sender agrees, in the absence of an agreement to the contrary, to pay the postal operator the agreed fee. A postal contract is defined as a contract for the provision of postal services. Under section 2(b) of the Postal Services Act, a postal packet is defined as "a consignment marked with an address in the final form intended for delivery by a postal operator; a postal packet also includes postal parcels". Postal services under section 2(1)(a) include collection, sorting	Czech Supreme Administrative Court ("CSAC") of 14/09/2021 in case No. 8 As 70/2018: A postal service is "an activity performed in accordance with a postal contract" (section 1(2)). This may sound like a tautology, but it is not so. While the law refers to the postal contract, it also describes the purpose of the postal contract and explains the scope of postal services provided under such contract. The postal operator provides one or more of the following services: collection, sorting, transportation and delivery of postal packets. The mere transportation of postal packets does not amount to a postal service insofar as performed by a person that also did not perform the collection, sorting or delivery of such postal packet.	The Postal Services Act regulates the responsibilities of postal service providers, especially their liability for the damage and loss of postal packets. For a long time, CSAC case law failed to draw a clear distinction between the forwarder of "parcels" and the provider of postal services. This left unresolved the mattter of the forwarder's obligation to acquire a postal license under Act 29/2000 Sb., and his liability – whether under the applicable general provisions of the Czech Civil Code ("CC") (an essentially unlimited liability) or under the Postal Services Act (limited liability). The provision of postal services also entails several other important obligations, such as the obligation to enter into a postal contract, the mail confidentiality duty and many other obligations

		and transportation of postal packets by postal network performed in order to deliver a postal packet to the addressee; postal services also include the delivery of money orders.	Freight forwarding is a coordination of transport rather than transport itself. The fundamental essence of a postal service is the collection and processing of a packet, frequently in association with its transport and delivery. The underlying nature of freight forwarding and postal services is therefore fundamentally different. The Postal Services Act, as amended at 14 April 2020, applies to all postal operators rather than just to postal license holders.	enshrined in the Postal Services Contract. The ruling resolved the potential conflicts by making every provider of postal services, forwarders including, who acts in accordance with the definition laid down in the Postal Services Act, subject to the Postal Services Act and the ensuing obligations. In this, the court referred to CJEU conclusions in Confrentra and Others (C-259/16, C-260/16).

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	S. 2471(1) CC: Through a freight forwarding agreement, a forwarder agrees to arrange for the principal in his own name and at the principal's account a transport of a consignment from one place to another, and to conclude or arrange transactions to have the consignment transported, while the principal agrees	CSC judgment of 26/9/2007, case No. 32 Odo 1254/2005 or SC judg. of 26/11/ 2007 in case No. 32 Cdo 348/2007 and others: If the freight forwarder (the defendant) fails to identify to the mandator (the plaintiff) the person of the carrier with whom he entered into the contract of carriage, the plaintiff	The CSC has consistently ruled that the forwarder is liable for damages in transit if he fails to identify the carrier used in transport to his principal. A contrario, if the forwarder identifies the carrier, he shall not liable for damages unless he defaults on his duties in protecting the mandator's interest (while still being bound to claim damages from the

		to pay the forwarder a fee. S. 2474 CC: In the absence of a provision to the contrary or unless prohibited by the principal prior to the start of the transport, a forwarder may carry out the transport that he agreed to arrange. S. 2475 CC: The forwarder must observe the terms and the mode of transport with due care and with a view to the principal's best interests as he knowns them. The forwarder must insure the consignment only if the parties so agree. S. 2482 CC: In all other matters, freight forwarding is regulated by analogy to an undisclosed mandate. S. 2461 CC: If, in his report on the performance of the mandate, the mandatary fails to identify the person with whom he concluded a contract on the account of the undisclosed mandator, the undisclosed mandator may assert his rights against the mandatary himself as a party obliged to	as the mandator may claim the satisfaction of the obligation arising under the contract of carriage directly from the plaintiff as the freight forwarder, or, alternatively, to claim damages from the freight forwarder.	carrier). The forwarder would also be liable if he carried out the transport by himself under s.2474. The question remains whether and to what extent the liability of the freight forwarder who acts in the capacity of a carrier is to be governed by CMR Convention or by the general rules on liability of carriers under the applicable provisions of the Czech Civil Code. There are substantial differences between the two, and the case law on this matter is still equivocal. According to the CSC's judgment of 26 September 2007 in case No. 32 Odo 1254/2005, the trial court refused to charge the freight forwarder the interest on compensation under Article 27 CMR, because it found that the freight forwarder's liability in the case arises under the Czech Civil Code rather than under the CMR Convention.

		perform under such contract.		
	Physical distribution	n/a	n/a	n/a
	Charters	S. 2582 CC. Through a contract for the operation of a means of transport (charter contract), an operator undertakes to carry cargo designated by the client and make at least one pre-set trip for that purpose or make a number of journeys within the agreed time as determined by the client, while the client undertakes to remunerate the operator. S. 2583 CC (1)An operator must ensure the fitness of the means of transport for the agreed journey and its usability for the agreed carriage, and provide the means of transport with competent crew and fuel and other necessary things. (2) If the means of transport is not fit for use under subsection (1), the operator must compensate the client for the ensuing damage, unless the operator proves that he could not have predicted the unfitness even with due care.	CSC judgment of 22/06/2010 in case No. 23 Cdo 5279/2009: In a contract for the carriage of goods, the law emphasizes carrier's duty of care for the cargo, and requires a higher standard of care and liability from the carrier. In the contract for the operation of the means of transport (i.e. the charter contract), the lawmaker emphasizes the element of operation of the means of transport, thus incorporating certain elements of lease, especially when it comes to the so-called time charter. The operator's obligation to take care of the cargo is not an essential element. The requirement to identify the means of transport, and to ensure that it is fit for the agreed trip and usable for the transport of the cargo indicate that the carrier possesses a relatively higher degree of autonomy	Legal scholars subscribe to completely opposing views on as to whether the operator's liability for damage or loss of cargo under section 2585 CC should be governed by the statutory regulation applicable to the carrier's liability. The cited judgment appears to support the view that the carrier's standard of liability does not apply to the charter operator. The problem is that the judgment refers to the now defuct Commercial Code and its provisions. The existing law is generally comparable to the defunct provision, but the two regulations do not quite coincide. The current case case applicable to the valid law is not available in public domain. In practical terms, we would therefore recommend resolving this matter transparently and unambiguously in the applicable contract.

		S. 2585 CC If an operator receives cargo to carry, the parties' rights and duties are governed by the provision on contracts of carriage with the necessary modifications to the extent permitted by the nature of the contract for the operation of a means of transport.	in discharging his contractual obligations compared to the charter operator. The carrier's obligations are defined by the end-goal of the transaction, i.e. the carriage and delivery of the consignment to the destination with due care, giving the carrier more discretion to decide how to accomplish that goal.	
	Towage	n/a	n/a	n/a
	Roll on/roll off	Section 9a of Act 111/1994 Sb. transposed some provisions of the CMR Convention also for the domestic carriage of goods by road in the Czech Republic, including Article 2 of the CMR Convention. At the same time, the practical application of section 9a is still a matter of contention in the Czech Republic and so far has not been settled in the judicial decision-making practice of Czech courts According to S. 9a of Act 111/1994 Sb.: The provisions on the conclusion and consummation of the contract of carriage, carrier's liability, claims and actions and provisions	CSC judgment of 27/03/2019 in case No. 32 Cdo 2812/2018 : Article 2 Section 1 of the CMR Convention regulates the conditions applicable to the "vehicle containing goods", which itself is carried over a certain segment of the journey. This condition does not apply if the consignment was reloaded to a different means of transport during the course of the carriage and if the goods themselves were loaded on a pallette.	This matter in not settled under Czech case law. But under the rulings available so far, the interpretation does not seem to differ significantly from Art. 2 CMR.

		relating to carriage performed by successive carriers (CMR 31) shall apply by analogy in the domestic carriage of goods by road to the contract of carriage, rights and obligations relating to carriage, compensation for loss or damage, and the responsibility of individual road carriers in the carriage operation performed jointly by several carriers.		
	Multimodal transport	n/a	Judgment of the District Court in Plzen-město of 4/10/2012 in case No. C 32/2018 Právo v přepravě a zasilatelství, issue No. 4/2020, p. 19 (Wolters Kluwer).	It may be inferred from the judgment that the law permits the application of the CMR Convention even in situations where it would not otherwise apply insofar as the parties agree to apply the CMR Convention in their contract. In the case at hand, the court admitted the application of the CMR Convention on the multimodal transport from Pilsen, Czech Republic to Riga, Latvia with a trans-shipment to a vessel.
	Substitute carriage[1]	Full aplication - for details please refer to the case law discussed in question 16.	For details please refer to the case law discussed in question 16.	For details please refer to the case law discussed in question 16.

[1] partly art. 3

	Successive carriage[2]	Full aplication - for details please refer to the case law discussed in question 16.	For details please refer to the case law discussed in question 16.	For details please refer to the case law discussed in question 16.
	'Paper carriers' [3]	Full aplication - provided that it was agreed the contract for the carriage of goods by road (according Art. 1 CMR). The Czech court will analyse the actual obligations agreed.	n/a	n/a

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

Not applicable.

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
2.1	NO	Articles 4, 7, 9 and 11 regulate the obligation to issue a CMR consignment note; the non-existence, loss or incompleteness of the consignment note is without prejudice to the validity of the contract of carriage and the	SS. 3 and 27 of Act No. 111/1994 Sb. lay down the carrier's obligation to keep the cargo documentation in the vehicle.	According to CSS in Case N 23 Cdo 65/2009, in the absence of CMR consignm note, the content of the contract of carriage is determined by S. 610 of th Commercial Code (repeal 31/12/2013). The ruling in Cdo 65/2009 was repeale

[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

		applicability of the CMR Convention.		CSC ruling in Case No. 31 C 488/2010. In case No. 31 Cdo 488/20 CSC addressed the issue a whether the parties have contract of carriage under 610 of the (now defunct) Commercial Code, in whic case the CMR Convention would apply to the case, c whether the parties have freight forwarding contrac under S. 601 of the Commercial Code. Unlike its previous rulings, the CS found that parties do not to issue a CMR consignme note for a contract to be treated as a contract of carriage and that the assessment of the nature the contract depends sole on the construction of the national law.
2.2	YES	If the particulars under Art. 7(1) CMR prove to be inaccurate or inadequate, the carrier may claim damages from the sender.	S. 2557 CC lay dow the sender's obligation to submit accurate information to the carrier about the content and nature of the consignment.	Reg. Court in Prague in Ca No. 48 Cm 232/2010-33 a Reg. Court in Hradec Králo in Case No. 38 Co 184/200 confirm the sender's liabil for the accuracy and adeq of information in the consignment note under A 7(1)(a) CMR.
2.3	YES	Under Articles 8, 9, 13 and 17 CMR, the carrier is liable for taking over and for the delivery of the goods to the authorised consignee, unless the carrier enters his reservations on the apparent condition of the consignment and its packaging with explanation under Art. 9 CMR.	Under S. 2560 CC, the carrier shall deliver the consignment to the consignee if he knows the consignee. Under S. 2561 CC, the consignee acquires the rights from the contract if he requests consignment be surrendered to him after it reaches the destination.	According to CSC in Case N 25 Cdo 3634/2013, the ca must explain his reservati entered under Art. 9(2) to extent necessary to reviev whether it was feasible to count the number of artic in transit.
2.4	YES	If the carrier does not avail himself of the right to enter reservations in consignment note under Art. 9(2) CMR, the	Under S.9(a) of Act No. 111/1994 Sb. in domestic carriage of goods, Articles 4 to 40 CMR apply; if the goods are	idem

		goods and their packaging are presumed to be free of defects. The carrier is also strongly advised to check the contents of information beyond the scope laid down in Art. 6(1) and 6(2) CMR; failure to do so may have legal consequences for the carrier (such as the info about the transportation temperature, or information recorded under Art. 24 and Art. 26 CMR.	not transported by road, under S. 2566(3) CC, to be relieved of liability for damage due to damaged goods or packaging, the carrier must prove that he informed the sender about the visible damage to packaging or prove that the packaging defect could not have been discovered on the takeover of goods.	

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
3.1	NO	As a carrier, no. Unless the carrier has agreed, n addition to his traditional role as a carrier, to an obligation for a proper execution of customs formalities.	n/a	Parties may enter into a contract that is not expr regulated in the Comme Code, but they must sta obligations with a suffici degree of specificity, les contract becomes invali The appellate court four the subject-matter of th Cooperation Agreement the carriage of goods by defendant's semi-trailer accordance with the pla orders and an arrangem the customs clearance ir transit and free circulati regimes. In its judicial re the CSC held that the ap

				court did not err when it the contested part of Ar the Cooperation Agreem constitute a promise of r Having satisfied the sign writing requirement, the applicable provision, wh forth the defendant's ob to reward the plaintiff fo customs debt in the eve failure to deliver the consignment to the cust authority within the des time limit, observes the essential and formal ele of a promise of reward. promise of reward does extend to the liability fo damage, the case may n decided under the appli provisions of the Comm Code that regulate defe liability.
3.2	YES	Czech courts subscribe to a broader interpretation of the term "other charges incurred in respect of the carriage of goods" under Article 23(4) CMR.	n/a	CSC judgment of 13/7/2 case No. 23 Cdo 3530/2(Excise duty satisfies the definition of "other char under Article 23(4) of th Convention. Since the matter is not c addressed in CMR, CSC subscribed to the interp prevailing in those EU jurisdictions that include duty in "other charges in in respect of the carriag goods" under Article 23(rather that construe the "other charges" to be in of "excise duty". CSC wa persuaded by the argum the more expansive interpretation of Art. 23 CMR. The obligation to a and pay the excise duty under S. 9(3)(a) of Act N 353/2003 Sb. for selecte transported under an ex duty suspension arrange

				at the time of their dam loss, except for the insta unforeseeable damage c In the case at hand, the obligation arose at the t consignment was destro a consequence of a traff accident and therefore c included under the term charges."
3.3	YES	According to the settled case law, the carrier is fully responsible for the consequences of the loss of customs documents.	n/a	CSC judgment of 26/3/2 case No. 23 Cdo 5211/20 The plaintiff claimed the carriage fee. The case tu whether the plaintiff wa obliged to submit to the defendant Part 3/8 SAD confirmed by the custon authority on the exit of t goods from EU, which w contractual condition fo payment of carriage fee The court has found tha document exists and wa submitted to the driver carried out the transpor court concluded that the plaintiff was capable of submitting and was obli submit the document ar dismissed the action.
3.4	YES	We refer to Article 11(3) CMR: The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods. This is to be read in conjunction with Article 11(1) CMR: For the purposes of the Customs or	n/a	Regional Court in Hradec in case No. 38 Co 130/20 18/9/2008: Action for damages filed sender against carrier fo damage caused by paym customs duty on re-impo goods. In the contract of carriage, the carrier agre pick up consignment documents from the des customs authority and c declarant. Driver failed t the end customer refuse accept the goods on acc missing documents (esp and the driver had to ret

		other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all the information which he requires.		Czechia with the consign paying the import duty o return trip. The court co that the sender's obligat make available consignm documents to carrier at designated place (custor office) and the carrier's obligation to pick up the documents both comply Art 11(1) CRM. Ultimate court dismissed the actio because the sender faile establish that he took al to avoid damage – such apply for customs duty exemption potentially av under Customs Code.

4. The right of disposal (art. 12)

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

Under Art. 12 CMR, the sender and the consignee have the right to dispose of the goods; on the sender's part, the right is tied to the submission of the first copy of the CMR consignment note and the sender' s duty to indemnify the carrier against all expenses, loss and damage involved in carrying out such instructions.

The sender's right to dispose of the goods ends on the handover of the second copy of the CMR consignment note to the consignee, from which moment the carrier must obey consignee's instructions. The carrier must make sure that the right to dispose of the goods is exercised by the authorised consignee.

The carrier may refuse to obey the sender's or the consignee's instructions, if the carrying out of such instructions is not possible at the time when the instructions are delivered or if the instructions interfere with the normal working of the carrier's undertaking or prejudice the senders or consignees of other consignment, or if the instructions would result in a division of the consignment. The carrier must immediately notify the person who gave him such instructions if he cannot obey them.

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 sender's obligation may appear somewhat outdated or archaic even, but given the exact wording of Art. 12(5) CMR, without recording the sender's changed instructions, until the first copy of the CMR consignment note is drawn up, the carrier may not follow such instructions. In practice, some senders circumvent the provision by incorporation "neutralisation clause" in their contract; but such clause is null and void under Art. 41 CMR, as it derogates from the Convention. In an effort to accommodate their clients, some carriers disregard the sender's essential obligation to submit the first copy of the CMR consignment note, thus exposing themselves to the liability for damage under

Art. 12(7) CMR, which may be classified as an instance of the carrier's gross negligence under Art. 29 CMR.

The carrier is not required to demand the submission of the first copy of CMR consignment note only if the consignee refuses to accept delivery of the goods, in which case, under Art. 15(1) CMR, the sender may dispose of the goods even in the absence of the first copy of CMR consignment note.

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
5.1	YES	Under Art. 14(1) and Art. 15 CRM, the carrier must ask the sender for instructions if circumstances prevent delivery of the goods.	n/a	n/a
5.2	YES	Art. 15 CMR	n/a	n/a

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

YES	Article 10 CMR Once a (cargo) shipment is placed in the container, the container constitutes (a part of) the packing of the consignment. If the goods in the container are not firmly attached and bump into themselves and the container walls, the consignment is deemed to have been packed inadequately.	n/a	Regional Court in Pilsen in Case 48 Cm 269/2011 of 11/08/201 see part Clarification.

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

In accordance with Art. 10 CMR, the sender is liable to the carrier not just for damage to persons, equipment or other goods, but also for any expenses due to defective packaging. These expenses (costs) include the carrier's expenses for the removal of leaked content of the consignment, re-packing of the consignment, cleaning-related costs or the value of time spent to carry out those activities etc.

The carrier must claim such costs by himself. The carrier also may claim compensation of costs expended and re-billed to the carrier by third parties..

Article 10 does not expressly limit the extent of damages that may be claimed by carrier from the sender. The sender has an unlimited liability for the damage to carrier and/or third parties, incl. loss of profit if the damaged third-party goods do not generate the expected profit on account of damaged packing or damage to the goods themselves.

The aggrieved party is principally entitled to a restoration of the thing to the original condition. But nothing prevents it from claiming a financial compensation.

The aggrieved party may also claim special, incidental and consequential damages. If, for example, the defective packaging causes damage to another consignment, which is intended to be shown at a trade fair, the manufacture may claim special and/or consequential damages due to inability to replace such unique product with another one. But such loss is very difficult to quantify in practice and therefore difficult to establish at a court.

Article 10 CMR does not cover damage caused by defective loading or improper securing/lashing the consignment to the vehicle. The proper fixing of goods to the palette, the arrangement of packages and boxes, and their lashing/fixing to the palette are also treated as part of the packing process, for which the sender is liable to the same extent as for securing the goods in the container.

At the same time, the sender is not liable for packing defects that were apparent or known to the carrier when the carrier took over the goods for transport in the absence of reservations. In this, we refer to the carrier's duty to check the apparent condition of the goods and their packaging under Art. 8(1)(b) CMR.

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

Under Art. 30(1) CMR, the consignee may enter his reservations only in the event of damage or loss of consignment.

Such reservation must give a general indication about the nature of the loss or damage. The reservation stating "damaged" or the consignee's signature or stamp that states "defective" is not sufficient. But the wording of the reservation need not describe the defect in detail or indicate the exact scope of damage or estimated cause of damage. The consignee's reservation regarding the general nature of loss or damage must be sufficient for the follow-up review of such reservation. The consignee must at least indicate that "half of the goods were damaged by water" or that "the palettes fell and smashed a portion of the boxes inside".

If the damage or loss is not apparent, the reservation must be in writing under Art. 30(1) CRM, preferably in the CMR consignment note, but also in any other written communication, such as a letter, telegram or fax.

In business usage, a reservation submitted by phone is admissible so long as the consignee may prove beyond reasonable doubt that the reservation was made at certain time and sufficient clarity. This may be difficult at times. It is always in the consignee's best interest to enter the reservation in writing, whose timely and due delivery is much easier to prove. Verbal reservation is not strictly necessary, though, unless the carrier later denies having received the verbal reservation at proper time and date.

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

Non-apparent damage is damage that cannot be observed by a general visual inspection of the goods and can only be detected after disassembly or unpacking of the goods.

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

When reservations do not comply with rules set out in Art 30(1), the consignee is presumed to have received the goods in the condition described in the consignment note. He may however provide evidence to the contrary by demonstrating that damage existed at the moment of delivery and that such damage was causaly linked to the carriage.

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)

Under Art. 31 CMR, Czech courts have the jurisdiction if the goods are loaded or unloaded in Czechia or if the defendant is based in Czechia or if the parties so agree. (C.f. CSC judgment of 9/5/2020 in case No. 30 Nd 79/2020).

CSC judgment of 9/5/2020 in case No. 30 Nd 79/2020:

In the case, the plantiff had a registered office in Czechia while the defendant had the registered office in the Principality of Andorra, the goods were loaded in Portugal and unloaded in Czechia. The Supreme Court found:

Although the defendant indicated in the order that the venue for disputes is the court having the jurisdiction over the defendant's registered office, the order also stated that the defendant enter into the contract with the plaintiff under CMR terms. The defendant does not have a registered office, branch, registered branch or any other property in the Czech Republic. Andorra is not a CMR signatory and Czechia and Andorra do not have any applicable bilateral treaties.

The court agred to the applicability of Article 31(1) CMR, according to which the plaintiff may file an action against the defendant in any court of the contracting country designated by the agreement, or, in its absence, in any court of the country where the defendant has his principal place of business or where the goods were taken over or at the place designated for delivery. If defendant reserved as venue for dispute a place that is not situated in a CMR contracting country, the plaintiff has the discretion to choose whether to bring action before the court having a jurisdiction at the defendant's registered office, in Portugal or in Czechia.

Czech courts acknowledge that under CRM 33 the contract of carriage may contain a clause conferring competence on an arbitration tribunal if it provides that the tribunal shall apply the Convention. The courts must therefore review whether the arbitration clause satisfies the requirements laid down in CMR 33, since under Art. 41(1), any stipulation that directly derogates from CMR provisions would be null and void. According to S. 106(1) of the Civil Procedure Code, if a court finds that the case should be heard before an arbitration tribunal according to the parties' agreement, the court may not hear the case and must stay the proceedings; but the court shall hear the case if the parties jointly declare that they do not insist on the application of their agreement. The court shall also hear the case if it finds that the case is not eligible to arbitration under Czech law of or if the arbitration clause is invalid or if the claim brought before the tribunal was to exceed the scope of competence conferred to the tribunal by the parties' agreement or if the arbitration tribunal refuses to hear the case. (For details, please to refer to the CSC judgment of 30 November 2011 in case No. 32 Cdo 1881/2011.)

7.2. Is there any case law in your jurisdiction on the period of limitation? (art. 32)

Yes/No	Convention	National law	Landmark cases
YES	Art. 32 CMR	n/a	CSC in case No. Odo 53/2002 d 23/1/2003: CMR Convention i Art. 32(1) does not limit the or year limitation period for a car of goods action to claims expre regulated in CMR, but applies t limitation perod to all such act under CMR. CSC in case No. Cdo 1702/2017 7/5/2018: The clauses on limita for actions under CMR do not address the question when a p

			may petition for the enforcem of the claim granted in the mai action. The regulation of limita periods in CMR is not "comple and the enforcement of claims courts under local law is unresolved. CSC in case No. 31 Cdo 1570/2 of 19/10/2016: In the context autonomous interpretation of CMR, the signed writing requirement for a claim under 32(2) CMR is satisfied even if t claim is filed by e-mail without certified electronic signature. CSC in case No. 32 Cdo 3034/2 of 09/01/2019: A written claim carriage under Art. 32(2) CMR not suspend the limitation per for the carrier's claim to carria fees.

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
YES	Art. 31 and Art. 33 CMR	Arbitration proceedings are regulated by Czech Act 216/1994 Sb., On Arbitration Proceedings and Enforcement of Arbitration Awards. S. 106 Civil Procedure Code: If a court finds, at the defendant's objection filed no later than at the court's first act on the merits of the case, that the case should be heard before an arbitration tribunal according to the parties' agreement, the court may not hear the case and must stay the proceedings; but the court shall hear the case if the parties jointly declare that they do not insist on the application of their agreement. The court shall also hear the case if it finds that it is not eligible to arbitration proceedings under Czech law of or if the arbitration clause is invalid or non-existent or	CSC in case No. 32 Cdo 1881/2 of 30/11/2011: According to C 33, the contract of carriage ma contain a clause conferring competence on an arbitration tribunal if the clause conferrin competition on the tribunal provides that the tribunal shall apply the Convention. If the co finds that the arbitration claus valid, it must stay the court proceedings under S.106 of the Civil Procedure Code. Within 3 days from the service of the or to stay the proceedings, the pa may agree not to bring the cas before the arbitration tribunal, while the effects of the court action remain in existence.

		if the scope of the claim brought before the tribunal were to exceed the scope of competence conferred to the tribunal by the parties' agreement court or if the tribunal refuses to hear the case. Section 89 of Civil Procedure Code: The parties to proceedings in a business case may confer the local competence to a different first instance court by their written agreement, unless the law stipulates an exclusive competence.	

(Chapter II, IV, VI)

8. Carrier liability (art. 17 – 20)

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

The Czech translation of the CMR Convention uses the terms "zástupci, pracovníci a všechny ostatní osoby" which can be literally translated as "representatives, staff and all other persons". Under Czech law, these persons do not necessarily need to be employees but can also be third parties that (acting under the terms of their contract) regularly act within the transport company. Any person that the carrier uses in fulfilment of his obligations and any person that is bound to the carrier's instructions shall be included in the term. To name few examples: sub-carriers, drivers, persons carrying out loading or unloading (if the carrier is responsible for such acts), advisers for the transport of dangerous goods, if hired by the carrier, etc.

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

This question turns on the matter of the carrier's liability for actions of his contract partners who are not directly involved in the transportation process, such as security, cleaning or maintenance staff. The carrier may be liable for the actions of such persons provided that actions are closely associated with the transport – e.g. a security contractor hired to guard the warehouse with consignments intended for loading. But carrier will not be liable for acts and omissions of a third-party cleaning services provider and third-party cleaning staff (unless when it comes to vehicle maintenance – c.f. Art. 17(3) CMR.

The carrier may be held liable for the actions of such persons only if such persons performed them in the course of their employment. This does not necessarily mean that those persons must be employed by the carrier. The carrier is liable for actions of his agents, servants and other persons performing the tasks for which the carrier hired them.

We refer to the CSC ruling in case No. NS 31 Cdo 488/2010, in which the CSC held the carrier fully liable under CMR for the actions of his subcarrier (or rather subcarrier's driver), who stole and disappeared with the consignment. The carrier argued that the subcarrier did not act within the scope of the tasks for which he was hired, to which the court retorted: "Under Art. 3 CMR, the carrier is responsible for the acts and omissions of his agents, servants and any other persons used for the performance of the carriage by the carrier's subcarrier and the subcarrier's subcarrier who is acting within the scope of their employment. So long as they are pursued within the scope of employment, such actions include even acts pursued in such person's own interest or in the interest of third parties rather than in the best interest of the carrier. The carrier is therefore responsible for the conduct of the driver of the subcarrier hired to perform the transport who steals the goods in the course of the transport as if such actions were his own."

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 from taking over the goods for transport to their delivery. In other words, the carrier becomes liable for the goods once he has accepted the goods with the knowledge that he takes them over in order to transport them rather than for some other purpose (storage, packing etc.). This means that the possession of the consignment must pass to the carrier wilfully and with the carrier's prior knowledge. During this period, the carrier is liable for the damage and loss of the goods, as well as for late delivery.

According to the prevailing opinion of legal scholars in Europe, CRM Convention is centred around the principle of no-fault liability. The Czech Supreme Court also subscribes to this view. But the carrier may be released from the liability on two basic grounds (risks and circumstances) laid down in Art. 17(2) and (4) CRM. The grounds under Art. 17(2) apply to both liability for damage and loss of goods, and for late delivery, while the grounds under Art 17(4) do not apply to delays in delivery.

Under Art. 18, in case of "non-privileged" defences against liability, the carrier must establish beyond reasonable doubt that their exist grounds for him being relieved from liability and prove that the damage was directly caused by listed circumstances and risks. In case of "privileged" defences against liability, the carrier is only required to establish the existence of such risks and circumstances (the goods were loaded or stored by the sender, the goods were transported in an open unsheeted vehicle etc), without being compelled to prove the direct causal link, so long as he establishes that it may be reasonable to assume that the damage could have been caused thereby.

In case No. 23 Cdo 1781/2010, CSC expressly ruled that the carrier's reference alone to some of the risks listed in Art. 4 CMR does not relieve him of the liability. The carrier must also produce evidence of at least a minimal causal link between the existence of the purported risk and the potential damage. The carrier must show that the damage could have been caused by the purported risk, but the causal link must be supported by documented reasons and may not be a matter of mere probability.

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. <u>Nice to know:</u> 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
8.4	YES	Art. 10 CMR Art. 17 ff CMR In this context it is important to consider if the damaged goods are also subject to a contract of carriage governed by the CMR, if they are, the answer is yes. However, if the damaged goods are not subject to the CMR,	S. 2566 sub. 1-3 Civil Code "(1) A carrier shall compensate the damage caused to a consignment between its receipt by the carrier and its surrender to the consignee. This does not apply if the carrier proves that the damage could not have been	There is no relevant cas dealing with the specifi question as described i Section 8.4 The decision referred t deals in general with Ar and 17 ff CMR.

		there is some doubt as to whether the CMR would govern the liability of the carrier. Damage to other goods: Art. 10 CRM defines “other goods” as goods that belong to third parties, rather than to the sender or the carrier, i.e. things loaded in the vehicle, stored in the warehouse or situated in the vicinity of sender’s defectively packed goods at the time the goods were placed in the carrier’s care under Art. 17(1) CMR. But Art. 10 CMR does not protect the consignee’s things that could be damaged by the defective packing of the sender’s goods. If the consignee’s goods are damaged in a warehouse after being unloaded from the vehicle, the consignee must claim the damages from the sender under the applicable local law.	prevented even by exercising professional care. (2) A carrier is released from the duty to provide compensation for damage by proving that the damage was caused by: a) the consignor, consignee or owner of the consignment or b) a defect or inherent nature of the consignment, including usual loss. (3) Where damage is caused by the consignment’s defective packaging, the carrier is released from the duty to provide compensation for damage by proving that it notified the sender of the defect upon the takeover of the consignment for carriage; where a consignment note or bill of lading was issued, it must contain an indication of the defective packaging. If the carrier fails to enter reservation on defective packaging, it may be released from the duty to provide compensation for damage by proving that the defect could not have been discovered upon the takeover of the consignment."	48 Cm 269/2011 of 11/ (Regional Court in Pilse see part Clarification
8.5	YES	Art. 10 CMR Art. 17 para. 3 CMR	It will be difficult to defend against liability where loss or damage occurs as a result of a defect in the equipment used to perform the carriage, particularly if that equipment is provided by the carrier. Many carriers will, when supplying a container, include a contractual obligation, in their standard terms, requiring the shipper to inspect the container and notify the carrier of any damage or defects in the container which would be uncovered by such inspection.	n/a

8.6	YES	Art. 20 and 22 CMR There is no relevant case law regarding Article 21 CMR.	§ 2557 sub. 1 Civil Code "The consignor shall provide the carrier with correct information about the contents and nature of the consignment." Civil Code commentary: "The information about the nature of the consignment pertains to the basic qualities of the goods, especially to the extent such qualities are capable of causing damage to the consignment in transit, as well as damage to other things or personal harm."	Article 20 CSC 23 Cdo 888/2011 o 30/01/2013 On claim for damages i event of consignment l Article 22 Reg. Court in Hradec Kr 38 Cm 38/2007-38 of 13/03/2008.

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)

Under the current business usage and settled case law, the wording of Art. 17 (2) CMR does not hint at force majeure circumstances. Unavoidable or unpreventable circumstances do not always have an external cause; from time to time, they may also be attributed to internal causes related to carrier's business operations, such as when the carrier's driver falls ill due to a pandemic or the carrier's warehouse catches fire due to service contractor's negligence. For details, please refer to CSC in case No. Odo 1186/2003 of 22/9/2004.

The damage caused by unavoidable or unpreventable circumstances is the damage sustained despite the carrier's reasonable due care and diligence.

Other instances of possible unavoidable circumstances with unpreventable consequences include:

(i) Vehicle theft – business usage supported by settled case law subscribes to a stricter view of the carrier liability for the consignment in transit. In case No. 34 Cm 233/97 of 16/5/2001, the Reg. Court in Hradec Králové held the carrier liable for the theft of a vehicle with a consignment of electronics when the driver left the vehicle unattended for over 5 hours. Despite the lack of intention, the driver's conduct was classified as gross negligence equivalent to wilful misconduct, since the driver knew and acknowledged that he could put the goods at risk of being stolen.

(ii) Technical defects -so long as they are caused by external circumstances rather than the vehicle's condition.

(iii) Robbery – Czech case law (e.g. CSC in 32 Odo 1186/2003 of 22/09/2004) treat a robbery, and armed assault or other similar conduct as circumstances that the carrier could not avoid and the consequences of which he was unable to prevent under Art. 17(2) CMR.

(iv) blockages and strikes

(v) road traffic etc.

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

If the damage arises due to one of the causes listed in Art 17 para. 4 CMR, the carrier is relieved of liability completely. Unlike under Art. 17(2) CRM, the carrier is only relieved of liability for the harm caused by the damage or loss of goods rather than for the harm caused by delay. According to Art. 18(2) CMR the risk is presumed to have been caused by a situation listed in Art. 17(4) if the carrier proves the causal link between the listed risk and the loss or damage, or if the loss or damage usually follows from the risk . Exceptions with regards to presumptions listed in Art. 18(3) to (5) apply.

The circumstances that may relieve the carrier of liability for loss or damage in transit include, without limitation:

(i) Use of open unsheeted vehicles – subject to the carrier's express agreement with the sender, specified in the consignment note.

(ii) The lack of, or defective condition of packing of goods.

(iii) Extent of packing – under Art. 8(1) CMR, the carrier must check, on taking over the goods, the apparent condition of the goods and their packaging. The carrier may not rely on packing defects as his defence when he re-packs the goods himself, such as after an accident or after having discovered packing defects during transit, without requesting requisite information about the means and methods of packing from the sender or the consignee.

(iv) Handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf of the consignee – according to the prevailing legal consensus, the carrier is relieved

of liability even if the consequences of poor handling, loading, stowage or unloading manifest themselves in the course or after the completion of carriage.

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
10.1	YES	Art. 23-28 CMR CMR only grants compensation for material damages with regards to the goods transported.	S. 2567 Civil Code "(1) In case of loss or destruction of a consignment, the carrier shall provide compensation in the amount of the price of the consignment at the time when it was taken over. (2) In case of damage to or loss of value of a consignment, the carrier shall compensate the difference between the consignment's price at the time of its takeover by the carrier, and the price a consignment that was damaged or lost its value would have had at that time." S. 1970 Civil Code (general provision) "A creditor who has properly fulfilled his contractual and statutory duties may require that a debtor who is in default of payments of a pecuniary debt pay default interest, unless the debtor is not liable for the default. The rate of default interest is determined by a government decree; if the parties do not stipulate the amount of default interest, the rate thus determined is considered to be the one stipulated." The implementation regulation under S. 1970 CC is S. 2 of	Metropolitan Court in Case No. 29 Co 550/20 21/5/2020 see Clarification Metropolitan Court in Case No. 51 Co 340/20 22/11/2016 see Clarification. CSC, Case No. 23 Cdo 3 of 13/07/2020 see Clarification CSC, Case No. 23 Cdo 1 of 31/08/2021. "Under Art. 23(2) CMR value of the goods is fi preferentially, accordi commodity exchange p its absence, according current market price, c absence of both, by re the normal value of go same kind and quality. case at hand, the good not traded on commod exchange, and the seco criterion had to be use discussing the applicat second criterion, the c assessed similar cases contracting countries s Austria, Norway, Italy according to which the market price generally with the selling price o goods of the same type quality. The current ma

			Government Decree No. 351/2013 Sb.	price under Art. 23(2) C price generated by nor market mechanism. If t parties agree on a cert purchase price, such pr principle, a normal ma price."
10.2	YES	Art. 24, 26 CMR Higher compensation may only be claimed where the value of the goods or a special interest in delivery has been declared in accordance with Articles 24 and 26.	n/a	CSC, Case No. 3 Cdo 24 of 29/01/2020 Third-party claim from carrier on account of c liability for the loss of g see part Clarification District Court in Zlin, Ca C 250/2014 of 10/04/2 see part Clarification Reg. Court in Hradec K Case No. 18 Co 522/20 see part Clarification.

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)

In recent cases, the Czech Supreme Court decided to place the full liability under Article 29 CMR in a case, for example, when the driver parked the vehicle with the goods, which were later stolen, in an unattended car park, even though the customer's order clearly stipulated that the vehicle must be parked in a secure car park. Please refer to the Czech Supreme Court judgment of 17 December 2014 in case No. 23 Cdo 2702/2012, the Czech Supreme Court judgment of 25 February 2016 in case No. 5452/2015; the Czech Supreme Court Judgment of 27 April 2016 in case No. 23 Cdo 140/2016 and other similar cases.

In another case heard before the Czech Supreme Court, the goods were damaged as a consequence of a road accident caused by the driver's microsleep. In this case, the court argued that the carrier's or rather the driver's conduct classifies as a gross negligence that may be considered equivalent to wilful misconduct, for which the carrier may not avail himself of the limitation of liability (c.f. Czech Supreme Court judgment of 4 August 2016 in case No. 32 Cdo 995/2013.) Contrary conclusions are presented by Regional Court in Hradec Kralove in case No. 47 Co 241/2020 of 6/4/2021, according to which the driver's microsleep does not amount to a gross negligence on the part of the carrier (while still confirming the carrier's limited liability). The Regional Court also analysed in detail whether the driver observed the statutory driving and rest times etc. As a lower-tier court ruling, this judgment does not have the authority to guide the decision-making of other courts.

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?

There exists a rather large body of settled case-law in the form of CSC judgments, which interprete the term in the context of Czech law. We present the conclusions of the CSC in case No. 23 Cdo 2702/2012 of 17/12/2014:

Czech jurisprudence largely infers the definition of fault from criminal law. A direct intention refers to the situation when the wrongdoer knew that he could cause the harm and intended to do so. An indirect intention is when the wrongdoer knew that he could cause the harm and acknowledged the possible harmful consequences in case they happened. In a conscious negligence, the wrongdoer knew that she could cause harm and unreasonably relied that the harm would not occur. In unconscious negligence, the wrongdoer did not know that he could cause harm, but he should have foreseen the possibility of the harm in his factual and personal circumstances. (Švestka, J., Spáčil, J., Škárová, M., Hulmák, M. et al. Občanský zákoník I. Komentář. 2. vydání. Praha : C. H. Beck, 2009, str. 1207).

The law also distinquishes between gross negligence (culpa lata), ordinary negligence (culpa levis), and slight neglect (culpa levissima).

Czech law does not directly use the term "fault that is equivalent to wilful misconduct", but the term indubitably refers to a case of gross negligence, as the negligent conduct of highest intensity.

The definition of gross negligence was introduced to the criminal law after 1 January 2010, the effective date of Act No. 40/2009 Sb., (new) Criminal Code; S. 16(1) contains the general definition of negligent fault, S. 16(2) adds that an offender is grossly negligent if his or her atittude to the

requirements of due care is indicative of the offender's clear disregard for the interests protected by the criminal law. Gross negligence refers to a higher degree of negligence, whether conscious or unconscious, inferred from the offender's attitude to the requirement of due care ("clear disregard"). The Criminal Code now contains the phrase "to commit offence even through gross negligence", i.e to commit an offence intentionally or at least through gross negligence, consciously or unconsciously.

The conclusion as to whether a conduct should be classified as a gross negligence (under Art. 29(1) and Art 32 CRM), must be always inferred from the specific circumstances of each case, with a view to the conduct of the driver or other carrier's employees, efforts exerted by the carrier to protect the consignment, his experience, value of consignment, place of loss/harm, level of protection of goods, sender's instructions and their observance by the carrier etc.

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	YES	Never	he case law, binding rulings of CSC in particular, is not sufficient to settle the question. In Czechia, only CSC rulings have the authority to settle the established practice of courts, unlike lower-tier courts. In addition, the quality of reasoning and decision-making by lower-tier courts tend to vary.
Theft during parking	YES	Rarely	The carrier is usually liable for damage under Article 29 CMR if he parks the vehicle in an unattended car park despite being bound to park in a secure park under his contract (please refer to the judgment quoted in section 11.1.) The carrier's liability for the damage sustained when parking in an unattended car park, if the contract does not require parking in a secure car park, is limited or even excluded, depending on the specific circumstances of each case (please refer to the judgment of the District Court in Zlin of 10 April 2015 in case No. 19 C 215/2014 or the judgment of the Czech Supreme Court of 28 January 2015 in case No. 23 Cdo 62/2013.) In our assessment, we rely on the judgments of the Czech Supreme Courts (provided the case law has been established by the Supreme Court), because only the decisions of the Supreme Court have the authority to guide the decision making of other courts in our jurisdiction.
Theft during subcarriage (for example an	YES	Never	In case No. 31 Cdo 488/2010 of 10/10/2012 , the CSC found that under Art. 3 CMR in conjunction with Art. 29 CMR, the carrier is responsible for the acts and omissions of his agents, servants and of any other

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

unreliable subcarrier)			persons of whose services he makes use for the performance of carriage, as well as for the acts and omissions of agents, servants and any other persons used by his subcarrier or the potential subcarrier of such subcarrier, as if such acts or omissions were his own, provided they act within the scope of their employment. These include also intentional acts of such persons pursued for their own best interests or the best interest of a third party rather than carrier's. The carrier is therefore responsible for the conduct of the driver who steals the goods in the course of the transport, but not for the damage caused by the driver's shopplifting, because such driver did not act within the scope of his employment. CMR 29 should be interpreted by analogy. Other judgment in similar cases also unanimously conclude that the carrier is always liable, mostly without limitation, for the damage caused by the theft of consignment under Article 29 CMR by the subcarrier engaged by the carrier.
Improper securing/lashing of the goods	NO	Sometimes	The case law, especially binding CSC rulings, is not sufficient to settle the question. Instead, we present decisions from lower-tier Czech courts, which do not settle law. The law does not regulate the obligations related to lashing & securing, which is why the actual duties usually depend on the parties' agreement – which tends to be lacking in practice. In the jurisprudence, an opinion prevails that in the absence of an agreement to the contrary, the lashing/securing obligation is vested in the sender when it comes to an obligation to protect goods against damage in transit and in the carrier when it comes to road traffic safety assurance. This opinion is supported by Regional Court in Pilsen in case No. 48 Cm 269/2014 of 11/8/2014, action for damage of goods in transit. The expert opinion clearly established that the damage (collapse of oversized shipment) was caused by a structural fault of wooden supports. The consignment was loaded by the sender with driver's partial assistance, the sender created the wooden support and loaded the goods. The carrier informed the sender about vehicle specifications and the driver indicated the place in the vehicle. The driver secured the consignment by chains. The carrier did not perform any other loading-related operations, did not decide about the structure, size or shape of structures – all this was performed by the sender. The court concluded that the sender was not liable for the damage under Art. 17(4)(c) CMR. To prevail, the carrier did not have to establish the exact cause of damage, but only to

			show that the damage could be attributed to the loading of goods (Art. 18(2) CMR), as attested by expert opinions. A different conclusion was reached by the Regional Court in Hradec Králové in case No. 47 Co 353/2015 of 1/3/.2016. But unlike in case 48 Cm 269/2014 , the parties did not dispute the fact that the driver lashing and secured the goods to the vehicle floor. The carrier's driver did not handle the shipment (cargo) in accordance with normal instructions and refused assistance and advice in loading and securing the shipment to the trailer. The accident investigator established that the consignment was damaged due to unreasonable lashing by the driver. The parties did not agree on loading process in advance. The carrier thus was not released from liability for damage under Art. 17(4)(b), (c) CMR in conj. with Art. 18 CMR. In case No. 15 Cm 86/2012 of 12/05/2015, the Metropolitan Court in Prague found that the carrier agreed to load the goods in accordance with sender's instructions. But expert opinions proved that the damage could not have been prevented by following such instructions. The court concluded that the carrier was not responsible for the damage.
Improper loading or discharge of the goods	YES		The case law, binding CSS rulings in particular, is not sufficient to settle the question. We present decisions from lower-tier Czech courts, which do not settle law. Czech law does not regulate the obligations related to loading & unloading, which is why the actual duties usually depend on the parties' agreement – which tends to be lacking in practice. In the jurisprudence, an opinion prevails that in the absence of an agreement to the contrary, the obligation is vested in the sender & receipient of the goods. This interpretation is based on the definition of the contract of carriage in the Czech Civil Code, according to which the carrier only undertakes the obligation to transport the goods. At the same time, some legal scholars have also reached different conclusions. In case No. 8 Co 167/2018 of 20/08/2018, the Regional Court in Ostrava concluded that the defendant's driver acted with gross negligence under Art. 29 CMR, when it unloaded the consignment out in the open instead of into a silo. The court found that the driver did not follow instructions in the order, did not arrive at the designated premises and instead unloaded the material at a different location, did not contact the designated persons and failed to hand over the relevant documents. As he transported the materials in a liquid bulk tanker with a compressor, the defendant being specialized in this type of

			carriage, the defendant as an expert in the field must have known that the material transported in the tanker may not be unloaded to an open space and must be instead pumped into an enclosed tank, as instructed in the plaintiff's order. The previous successful 9 transports to the same destination also indicated that the parties had established a business usage and that the defendant knew the unloading place. In case No. 49 Cm 188/2012 of 22/04/2016 the Regional Court in Pilsen concluded that the carrier is liable for the goods damaged by driver during loading in accordance with the sender's on-site instructions. We find the court's decision in this case incorrect, as the court disregarded that the driver loaded the goods at sender's instructions, and we believe that the judgment lacks adequate and clear reasoning.
Temporary storage	YES	Never	The case law, binding CSS rulings in particular, is not sufficient to settle the question.
Reload/transit	YES	Never	The case law, binding CSS rulings in particular, is not sufficient to settle the question.
Traffic	YES	Rarely	The carrier is principally responsible for the damage caused by accidents or other operational circumstances, insofar as he failed to take due care of the consignment in accordance with Article 17(1) CMR. As an example, we may quote the conclusions of the CSC judgment of 28/01/2014 in /case No. 23 Cdo 897/2012: The defendant did not observe his obligations as a carrier, since he could and should have assumed that when driving a semitrailer downhill, along a bendy road and with a heavy load on a late winter evening, there exists a risk of the vehicle skidding, and should have foreseen that there could be ice on the road that would make it impossible to drive the heavy semitrailer loaded with goods given the weather conditions at that time – it was raining during the day, the temperate was around zero and it started to freeze in the early evening. The road was not icy just at the particular patch where the accident happened. The defendant could and in his professional capacity should have known that driving along at 40 km/h in such circumstances was unreasonable. Nor was defendant prevented from choosing a different transportation route at that time or interrupt the transport and wait until the road was cleared and chemically treated.
Weather conditions	YES	Never	Please refer above with necessary modifications
Overloading	YES	Never	The case law, binding CSS rulings in particular, is not sufficient to settle the question.

Contamination during / after loading	YES	Never	The case law, binding CSS rulings in particular, is not sufficient to settle the question.
Contamination during / after discharge	YES	Never	The case law, binding CSS rulings in particular, is not sufficient to settle the question.

13. Successive carriage (art. 34 – 40)

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

According to CSC in case No. 23 Cdo 4039/2008, the carrier who settled compensation for damage may claim the damages from the successive carrier only insofar as the successive carrier, as defined in Art. 34 CMR became a party to the single contract of carriage by reason of accepting the goods and the consignment note without reservations. Under Art. 34 CRM, subsequent carriers must perform a part of the carriage under the carriage contract.

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

There is no settled case law in our jurisdiction on the application of Articles 37 to 40 CMR.

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

There are no binding court rulings in our jurisdiction that would define the terms. According to CSC in case No. 23 Cdo 4039/2008, a carrier becomes a successive carrier by transporting the goods under the contract of carriage over a portion of the journey. According to our jurisprudence, a substitute carrier who gets involved in the transportation on account of a technical malfunction of a vehicle operated by the principal carrier will also become a successive carrier under Art. 34 by accepting the goods, even if his involvement was not planned at the onset.

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	According to Ministry of Foreign Affairs Communication No. 66/2011 Sb., the Czech Republic acceded to the Additional Protocol to the CMR Convention introducing the	n/a	n/a	CESMAD BOHEMIA, the Association of Road Transport Operators, has strived to introduce the electronic CMR consignment note into practice in recent years. The principal problems that prevent a

	electronic consignment note.			broader adoption of e-consignment notes include high operating costs and the generally reluctant approach of Czech public authorities to accepting electronic documents.

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?

In a potential lawsuit in the Czech Republic, the proof about the issue of the electronic consignment note must withstand the scrutiny and the possible objections by the counterparty.