CMR – Country Report Format

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

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

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

Yes/No	Convention	National law	Landmark cases	Clarification
YES	*The CMR Convention is automatically applicable (i.e. ex proprio vigore) if the conditions mentionned in article 1 and 2 are met.* *However the Consignment note fulfills an important role with regard to article 12 para. 2 CMR, article 13 para. 1 CMR and article 34 CMR.* *Article 4:The absence, irregularity or* *loss of the consignment note does not affect the existence or the validity of the contract of carriage. The contract of carriage remains subject to the provisions the CMR.*	*Article 8:1090 DCC (Dutch Civil Code): The contract for the carriage of goods by road is consensual i.e. it is based on consensus between the parties to such contract.*	HR 23-01-1987, S&S 1987, 130 *see also:* *C.A. 's-Hertogenbosch 05-09-2006, S&S 2007, 10* *C.A. Leeuwarden 20-02-1974, S&S 1976, 31).*	*In the 1987 judgment the Supreme Court ruled as follows: on the basis of the lack of the sender's signature or stamp on the aforementioned document, the Court of Appeal rightfully assumed that no consignment note within the meaning of the CMR has been drawn up.* *cf.* *K.F. Haak, De Aansprakelijkheid van de vervoerder ingevolge de CMR, 1984, p. 46.* *Th. H.J. Dorrestein, Recht van het internationale wegvervoer, 1977, p. 92.*

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

Yes/No	Convention	National law	Landmark cases	Clarification

YES	P*arties may choose to apply the CMR to an internal contract of carriage of goods by road, which might be either a single contract of carriage or a framework agreement for multiple carriage of goods by road during a certain period of time.*	A*rticle 8:1102 para. 1 DCC.*	HR 26-05-1989, *S&S 1989, 94* HR 05-01-2001, *NJ 2001, 391*	Parties to a contract for the carriage o*f goods* by road are free to d*eclare* the CMR applicable to their contract in the event that thi*s* Convention would not be directly applicable *pursuant to art. 1 para. 1 CMR*. Insofar as the parties declare the CMR Convention applicable to a c*ontract* f*or the carriage of goods by road* w*hich* does not have an international character, such a choice will only override the mandatory n*ational* law applicable to that c*ontract* if the requirements for s*uch* derogation, as stated in artic*le* 8:1102 para. 1 of the Dutch Civil Code, a*re met* (cf. HR 26 May 1989, S&S 1989, 94). According to art. 8:1102 p*ara. 1* DCC, a derogation from the mandatory r*ules* contained in Section 2 of Title 13 D*CC* is possible p*rovided* a stipulation to that effect has been expressl*y agreed in writing,* other than by reference to *another* document.

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 para. 4 CMR*. This Convention shall not apply: a) to carriage performed under the terms of any international postal convention; b) to funeral consignments; c) to furniture removal.	*Articles 8:1170 - 8:1201 DCC contain special provisions relating to the contract for furniture removal.*	*HR 22-01-1993, NJ 1993,456*	*Definition of furniture removal contract in article 8:1170 para. 1 DCC: "The removal contract within the meaning of this title is the contract for the carriage of goods, whereby the carrier (the remover) undertakes vis-à-vis the sender (the principal) to transport removal goods, either exclusively in a building or dwelling, or exclusively partly in a building or house and partly by road, or exclusively by road. Rail transport is not considered to be road transport.".*

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**	*Articles 8:60 - 8:73 DCC contain special provisions relating to the freight forwarding contract. However this is a very narrow definition which does not cover all activities which in practice are deployed by Dutch freight forwarders. The activities of Dutch freight forwarders might fall, at least in part, within the legal definition (scope) of other special (service)*		*Haak: "The freight forwarder must say what he does and he must do what he says".* The issue of the distinction *between i.e. the legal qualification of the* contract of carriage and t*he* freight forwarding c*ontract* has generated a *great number of* disputes u*nder Dutch case law. The distinction between the*

		contracts including the contract for the carriage of goods.		*two contracts is in practice not always evident.* *Strictly speaking, The CMR does not apply to the freight forwarding contract as defined in article 8:60 DCC. However art. 8:61 DCC stipulates the following: "1. Insofar as the forwarder himself performs the agreement to which he committed himself (i.e. the contract of carriage of goods), he himself is regarded as the carrier under that agreement. 2. Any stipulation that deviates from this article is void.".* *Hence, if the freight forwarder performs the contract of carriage himself then he qualifies as carrier. Furthermore if the contract between the freight and his principal clearly falls within the legal definition of art. 1.1 CMR or if that contract is unclear then the freight forwarder also qualifies as a carrier (cf. quote Haak).*
☒	**Physical distribution**			The different s*ervices and/or* activities agreed upon and/*or* performed under a p*hysical dictribution* contract are subject to different legal q*ualifications and/or different legal regimes* (e.g. contract of carriage, forwarding contract, contract for services, storage contract, *custody* etc.). In addition general terms and conditions may

				apply e.g. SVA Physical Distribution Conditions.
☒	**Charters**	*Article 8:1093 DCC contains a legal definition of the time and voyage charter contracts for the carriage of goods by road.* *According to article 8:1094 BW, the legal provisions regarding rental, custody and loan do not apply to the provision of a vehicle with driver for the purpose of transporting goods by road.*	*HR 17-11-1978, NJ 1980, 484.*	*Time and voyage charters are not defined under CMR. However, if a contract for the carriage of goods by road qualifies as time or voyage charter under Dutch internal law and that same contract falls under the definition of article 1 para. 1 CMR, then the CMR is mandatorily applicable. The CMR can also be declared applicable by the parties.* *In the 1978 judgement the Dutch Supreme Court ruled as follows: It was agreed between parties that Zuijderwijk (carrier) would provide international transport services for Wetram, with one or more trucks from her company. This has been done since 1974, and Zuijderwijk made truck combinations with driver and with the required documents available to Wetram for a fee. In ruling on the basis of these facts that Zuijderwijk thus concluded contracts of carriage with Wetram, the Court of Appeal did not err in law (K artt. 91-99).* *2. The Court of Appeal rightfully ruled that the CMR applies to the transport agreements concluded between said parties.*

☐	**Towage**			
☒	**Roll on/roll off**	*Article 8:1091 DCC*	HR 29-06-1990, NJ 1992, 106 HR 14-06-1996, NJ 1997, 703	*This relates to article 2 CMR para. 1 CMR. In the 1996 judgment the Supreme Court considered the following. In first sentence, this provision presupposes as a main rule that the liability regime of the CMR continues to apply to the phase of the carriage by the other means of transport. The second sentence makes an exception to this rule with regard to the liability of the road carrier for loss, damage or delay in the delivery of the goods, occurring during the carriage by the other means of transport, insofar as certain conditions are met. If these conditions are met, the liability of the road carrier is not determined by the CMR but in the manner in which the liability of the non-road carrier would have been determined, if a contract of carriage would have been concluded between the sender and the non-road carrier and in accordance with the statutory provisions of the mandatory rules regarding the non-road carriage of goods.* *The view followed by the Court of Appeal that it must concern an event that is typical for the other means of transport in question is irreconcilable*

				with the object and purport of that provision (i.e. article 2 para. 1 CMR).
☒	**Multimodal transport**	A*rticles 8:40 - 8:52 DCC contain special provisions relating to mulitimodal transport i.e. combined carriage of goods.*	HR 01-06-2012, NJ 2012/516	I*n the 2012 judgment the Supreme Court ruled as follows.* The contracting S*tates* have expressly committed themselves to negotiate with regard to the c*ontract* for combined (multimodal) transport. The fact that article 2, para. 1 CMR expressly brings stacked transport within the scope of the CMR, while this is a form of multimodal transport, indicates - just like the signing protocol - that multimodal transport in general does not fall within the scope of the CMR. The Supreme Court is of the opinion that the CMR Convention in general does not apply to multimodal transport that does not concern stacke*d* transport w*ithin the meaning of article 2, para. 1 CMR*.
☒	**Substitute carriage**[1]		HR 17-11-1978, NJ 1980, 484	C*MR is applicable if the substitute carriage falls under article 1 CMR or if CMR is declared applicable by parties. In the Netherlands contracts of carriage by road are often performed by sub-carriers. Generally the main carrier concludes a second contract of*

[1] partly art. 3

				carriage with the sub-carrier. The main carrier is then considered the shipper of the goods in the second contract of carriage. *The CMR does not contain special i.e. separate regulation for charters and sub-carriers. When such sub-carriers participate in a transport that is subject to the CMR, they might qualify either as "other persons" within the meaning of article 3 CMR, as "non-road carrier" within the meaning of article 2 para. 1 CMR or as successive carrier within the meaning of Articles 34 et seq. CMR.*
☒	**Successive carriage**[2]			CMR is applicable if the s*uccessive* carriage falls under t*he definitions (scope) of* article 1 *CMR as well as under article 34 CMR.*
☒	**'Paper carriers'** [3]			*The contract for the carriage of goods by road is consensual by nature (article 1 para. 1 CMR and article 8:1090 DCC). The so-called 'paper carrier' accepts a CMR transport but does not carry out any part of it himself. He outsources the*

[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

				performance of the whole carriage to his regular charter or to a sub-carrier. CMR is applicable if the c*ontract of* carriage falls under article 1 *CMR, regardless of who actually performed any or all part of the contract of carriage by road.* *C.A. 's-Hertogenbosch 04-03-2008, S&S 2011/34: the term carrier under the CMR is not a factual term but a legal concept, which means that the carrier does not have to personally perform the carriage. This view also fits in with the consensual character of the CMR, which is also corroborated by art. 4 CMR, in which it is stipulated on the one hand that the contract of carriage must be laid down in a consignment note, but on the other hand it is stipulated that the existence of the contract of carriage and the applicability of the CMR convention do not depend on the presence of a valid consignment note.*

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

Generally speaking the test regarding the applicability of the CMR is whether the contract concluded between the parties falls within the scope article 1 CMR. In the St. Clair judgment the Dutch Supreme Court rejected the narrow interpretation of article 2 para. 1 CMR. However other types of multimodal transport are considered to fall outside the scope of the CMR.

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

2.1. Is the consignment note mandatory?
2.2. Nice to know: Does absent or false information on the consignment note give grounds for a claim?
2.3. Is the carrier liable for acceptance and delivery of the goods? (art. 8, 9 & 13)
2.4. To what extent is the carrier bound to his remarks (or absence thereof) on the consignment note? (For instance: Can a carrier be bound by an express agreement on the consignment note as to the quality and quantity of the goods?)

Number of question	Yes/No	Convention	National law (civil law as well as public law)	Landmark cases	Clarification
2.1	YES	Ar*ticle 4 CMR*	Road Transport o*f* Goods Act *(article 2.13)*		T*he Road Transport of Goods Act is a public law regulation.*
2.2	YES	A*rticle 7 CMR* *Article 11 CMR*	A*rticle 8:1114 DCC (sender's obligation to inform carrier about goods and their handling)* *Article 8:1115 DCC (obligation for sender to compensate carrier for damage when documents and information for the carriage or for the fulfilment of customs and other formalities before delivery of the goods, are not adequately available)* *Article 8:1119 para. 4 DCC (parties e.g. sender or carrier must compensate each other for damage which they suffer from absence of data/information as regard to the consignment note)*	HR 18-12-2015, S&S 2016/37	S*upreme Court:* The CMR does not provide for an exhaustive regulation of the carrier's liability. Art. 17 CMR exclusively regulates the carrier's liability for loss of or damage to goods transported by him, as well as for delay in delivery. The carrier can be held liable for damage other than the*se* on the basis of the applicable national law (cf. HR 15 April 1994, S&S 1994/72; Cargofoor). D*C Rotterdam 17-12-1998, S&S 1999, 134: The sender is obliged to provide the carrier*

					with the necessary instructions/information to comply with customs formalities and other formalities, which must be completed before the delivery of the goods (art. 6 sub j, 7 and 11 CMR). In principle, the carrier is not obliged to investigate the completeness and accuracy of those instructions and information. The sender is liable to the carrier if those instructions/information are incomplete, inaccurate or incorrect, except in the case of the carrier's fault.
2.3	NO	T*he question is unclear! Assuming that this question does not relate to art. 17 para. 1 CMR but to article 13 CMR regarding normal / regular delivery after arrival of the goods at the place of delivery, the follwing should be considered.*	*Articles 8:1126 and 8:1127 DCC.*	HR 20-04-1979, S&S 1979, 83 HR 24-03-1995, S&S 1995, 74	D*elivery within the meaning of article 13 CMR is based on a consensus between the carrier and the conignee.* I*n the 1995 judgment the Supreme Court considered the following: delivery within the meaning of art. 17 para. 1 CMR does not only mean the actual unloading or delivery of the transported goods. There is no ground for such narrow interpretaion of the term delivery, while such a narrow*

					interpretation can also lead to unreasonable results/outcome in cases where, pursuant to the contract of carriage, the counterparty of the carrier must unload the goods; in such cases it is obvious to consider the moment at which the counterparty has the goods at its actual disposal after arrival at destination, as the time of delivery. The CMR does not rule out (cf. HRHR 20-04-1979, S&S 1979, 83) that after arrival at destination, the carried goods might remain in the custody of the carrier, under another agreement and that the contract of carriage ends with effect from the date on which that other agreement enters into force.
2.4	YES	A*rticle 8 CMR* Ar*ticle 9 CMR* *Article 30 CMR*	A*rticle 8:1120 DCC* A*rticle 8:1124 DCC*	HR 23-01-1987, S&S 1987, 130	I*t depends! F*i*rst, one should bear in mind that t*he probative value of the *CMR* consignment note remains without effect if the consignment note is invalidly *drawn up* (cf. HR 23-01-1987, S&S 1987, 130). *Article 9 para. 2 CMR provides that if the consignment note*

					contains no specific reservations by the carrier it shall be presumed, unless the contrary is proved, that the goods, packaging etc. did correspond with the statements in the consignment note. Even if the carrier made no reservations within the meaning of article 8 CMR, it is nevertheless possible for the carrier to rebut the presumption in article 9 para. 2 CMR. If the loss or damage is not apparent the carrier has less to fear from articles 9 and 30 CMR. The cargo interested party bears the burden of proof that the loss or damage occurred during transport (Haak, p. 219). According to Dorrestein (p. 109) the last sentences of article 8 para. 2 and 3 CMR might be construed in such a way that proof to the contrary might not be admitted, as it is also the case under article 30 para. 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 para. 3 CMR relates only to the liability of the carrier for the consequences arising from the loss or incorrect use of the documents. This provision does not speficically prescribe that the road carrier must complete customs clearance before the delivery of the goods.*	*Article 8:1115 para. 2 DCC prescribes that the carrier must exercise reasonable care so that the documents which have been handed to him do not get lost or mishandeld. Compensation owed by him in this respect shall not exceed that owed pursuant to articles 1103 to 1108 inclusive, in case of loss of the goods. Hence this provision doest not contain any specific obligation for the carrier to complete customs clearance before the delivery of the goods.*	HR 16-*09*- 2022, ECLI:NL:HR:2022:1222 *In case of smuggled goods which are seized by customs during CMR transport the Supreme Court ruled as follows. As to whether the carrier must prove that the goods found by customs during transport are the same as the goods delivered by the sender to the carrier, or whether the sender must prove that these are not goods given by him to the carrier, the CMR does not contain any express rules. Nor are such rules inferred from art. 6, 7, 8, 9 and 11 CMR. The presumption of proof of art. 9 CMR, does not extend to the question of whether the goods found during transport are the same as the*	*Custums formalities are normally completed by freight forwarders acting as customs agents and not by road carriers. Dutch case law is divided on the question of whether the CMR carrier is always obliged to carry out customs clearance and other formalities which have to be completed before delivery of the goods* *C.A. The Hague 14-05-2002, ECLI:NL:GHSGR:2002:AL8129, S&S 2003, 47: "It is incorrect to believe that Kamps (the carrier) should have completed the formalities necessary for obtaining an export refund even without clear instructions from its client (the sender). After all, there is no general rule stating that the carrier is always*

				goods delivered by the sender. The case law and literature of the various CMR signatory States do not show a prevailing view on the aforementioned provisions of the CMR. This means that it is not the CMR, but national law that determines the burden of proof with regard to the question of whether the goods found by customs during transport are the same as the goods handed over by the sender to the carrier.	*responsible for taking care of the export formalities in the country of origin."* *C.A. Amsterdam 13-12-2001, ECLI:NL:GHAMS:2001:AK4610, S&S 2002, 120: "As a starting point, also to be inferred from art. 11 CMR, the cross-border road carrier will have to comply with the applicable customs formalities and other formalities, if the clearing of T1 documents is to be regarded as well."*
3.2	NO	A*rticle 23 para. 4 CMR (the carrier is not liable, provided article 29 CMR is not applicable)*	A*rticle 8:1105 DCC (the carrier is not liable, provided article 8:1108 DCC is not applicable)*	HR 14-07-2006, NJ 2006, 599 HR 11-10-2002, S&S 2003, 61 *(restrictive interpretation of article 23 para. 4 CMR)*	*Quote HR 11-10-2002: It is incorrect to believe that the damage, consisting of costs and fines for no clearance of the T-1 document, is not covered by art. 17 CMR and therefore does not fall under art. 23 para. 4 CMR and art. 28 CMR. Art. 17 CMR relates to the question in which cases the liability of the carrier exists, while art. 23 et seq. CMR relate to the extent of the compensation...* *Quote HR 14-07-2006: It is consistent with the purpose and intent of art. 23 para. 4 CMR, as it must be construed with*

					regard to the background of the CMR system of (limitation of) compensation owed by the carrier. Hence one must assume that the costs referred to in art. 23 para. 4 CMR concerns the costs that are directly related to (the normal performance of) the transport as such. These costs therefore do not include the costs which, under the relevant customs law regime, are related to the loss of the goods. This view is also the prevailing one in Dutch legal literature and case law as well as in Germany. This restrictive interpretation is also in line with art. 30§ 4 CIM. cf. Haak, p. 248.
3.3	YES	Article 11 para. 3 CMR relates to the liability of the carrier for the consequences arising from the loss or incorrect use of the documents.	Article 8:1115 para. 2 DCC prescribes that the carrier must exercise reasonable care so that the documents which have been handed to him do not get lost or mishandeld. Compensation owed by him in this respect shall not exceed that owed pursuant to articles 1103 to 1108 inclusive, in case of loss of the goods.		

3.4	YES	Article 11 para. 3 CMR relates to the liability of the carrier for the consequences arising from the loss or incorrect use of the documents.	Article 8:1115 para. 2 DCC prescribes that the carrier must exercise reasonable care so that the documents which have been handed to him do not get lost or mishandeld. Compensation owed by him in this respect shall not exceed that owed pursuant to articles 1103 to 1108 inclusive, in case of loss of the goods.	HR 18-12-2015, NJ 2016/341	*Yes, if this question relates to "incorrect treatment" within the meaning of article 11 para. 3 CMR.* *However according to the Dutch Supreme Court this issue i.e. "incorrect treatment of customs documents" should not be equated with damage caused by the carrier passing on wrong container numbers i.e. wrong information, which causes damage other than thoses defined in article 17 para. 1 papra. 1 CMR.* *In the 2015 judgment the Supreme Court considered the following: The CMR does not provide for an exhaustive regulation of the carrier's liability. Art. 17 CMR exclusively regulates the carrier's liability for loss of or damage to goods transported by him, as well as for delay in delivery. The carrier may be liable for damage other than these under the applicable national law (cf. HR 15 April 1994, NJ 1995/114 (Cargofoor)).*

4. The right of disposal (art. 12)

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

Pursuant to art. 12 CMR the sender has the right to dispose of the goods as long as the second copy of the consignment note had not yet been handed over to the consignee, and the driver should therefore not have taken delivery instructions from someone else he believed to be a representative of the conbsignee (cf. C.A. 's-Hertogenbosch 25-11-1999, ECLI:NL:GHSHE:1999:AK4208, S&S 2001, 33).

In contrary to sender's instruction ("unloading on Monday, April 30"), the consignee has requested the carrier to unload on April 29, therefore article 15 CMR is not applicable. pursuant to article 12 CMR, the sender's right of disposal ceases to exist when the consignee is entitled to demand delivery of the goods after arrival of the goods at destination, in accordance with art. 13 CMR. Consequently, by complying with the consignee's request in this regard, the carrier had fulfilled its obligation to deliver under the contract of carriage and had not committed any breach of contract towards the sender (cf. C.A. The Hague 19-09-1995, ECLI:NL:GHSGR:1995:AL8953, S&S 1996, 32).

The sender and the carrier may freely agree, even without a statement on the consignment note as referred to in art. 12 para. 3 CMR, that the carrier must follow the instructions of the consignee with regard to the place of delivery. The burden of proof of such agreement is on the carrier (cf. C.A. The Hague 28-11-2006, ECLI:NL:GHSGR:2006:AZ3417, S&S 2007, 136).

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

The carrier is obliged to follow the instructions given to him by the sender (art. 12 para. 1 CMR). By delivering the goods without prior instruction or approval from the sender, the carrier acted in breach of this obligation and is therefore liable (cf. D.C. Rotterdam 16-04-1998, ECLI:NL:RBROT:1998:AK3909, S&S 1999, 123).

The carrier is obliged to deliver the goods to the unloading address specified by the sender (art. 12 paragraph 1 CMR). The mere mention of a person's name and telephone number in (instruction) faxes is insufficient to assume that the carrier could rely on that person's instructions to deliver the goods to a different address without consulting the sender (cf. D.C. The Hague 03-09-2003, ECLI:NL:RBSGR:2003:AT4388, S&S 2005, 31).

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	*Article 14, 15 CMR*			*C.A. 's-Hertogenbosch 05-09-2006, S&S 2007, 10: The carrier has failed to fulfill its obligations towards the sender: the carrier not only failed to ask sender for instructions, but also left the sender completely ignorant of the consignee's refusal to accept delivery and of the subsequent storage op the goods at the carrier's premisses. The clause "free-at-frontier" in the sale contract does not release the carrier from its obligation to deliver on time or to notify the sender promptly in the event of an impediment thereof and to request instructions from the sender. By not doing so, the carrier has deprived the sender of the opportunity to quickly resolve any problem with its customer. Hence the carrier is liable.*

					C.A. Arnhem 30-08-2011, S&S 2012/33: If *the execution of the contract on the agreed terms has become impossible as a result of a fault* on the part of the carrier, the carrier must request instructions, but this does not mean that by following instructions, he would be released from liability.
5.2	YES	A*rticle 15 CMR*			When delay in delivery occurs (e.*g. the driver arrives later at destination than agreed and therfore the trailer cannot be unloaded immediately and the carrier acts in violation of art. 15 CMR)* and the goods/trailers are left unattended leading to theft and/or damage to the goods before actual delivery to the congsignee. *Unlading the goods after rejection by consignee and terminating the contract of carriage without asking for instructions before.*

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	*Article 23, 25 CMR*			C.*A.* 's-Hertogenbosch 04-02-1986, S&S 1987, 25*: The provisions of the CMR apply both to the trailer offered for carriage by the sender as well as to the goods in that trailer.* *D.C. Rotterdam 11-12-2013, S&S 2014, 123: 'Goods' are understood to mean both the sender's trailer as well as the goods stowed therein.*

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

Article 10 CMR is most often invoked bij the carrier when a loaded truck/trailer overturns during transport operation. Dutch case law relating to this subject-matter is scarce and is generally based on a narrow interpretation of article 10 CMR. Article 8:1117 DCC seems to provide an additional and much broader protection to the carrier because, unlike article 10 CMR, it is not only limited to damage and costs due to defective packing of the goods.

Defective packaging may occur if the bags of Dowlex (packaged plastic granules) have decreased in size after loading, to such an extent that the straps with which the goods were secured became too loose. As the sender, Dow Europe had to ensure that the Dowlex bags were in such a final condition that no further changes relevant to the safety of transport would occur. If the bags have started to shrink due to either cooling of the granules or the escape of air, and the goods have started to slide as a result, then the (method of) packaging has obviously been faulty. (cf. D.C. Middelburg 25-03-2009, ECLI:NL:RBMID:2009:BK8797, S&S 2010/78).

A defect in the stowage of the goods in a container loaded with 24 stacked pallet screws with 33 cm space left in that container (which space is not filled), cannot be regarded as a defect in the packaging within the meaning of art. 10 CMR. Now that art. 8:1117 Dutch Civil Code (sender's obligation to pay compensation with regard to extraordinary damage caused by goods given for carriage, or the handling thereof) provides a regulation to supplement the CMR, this article does not constitute a 'null and void clause' within the meaning of art. 41 CMR. The sender is in principle liable if it is established that the

accident was caused by sliding/shifting of the goods in the container. The burden of proof in this regard rests on the carrier (cf. D.C. Rotterdam 22-12-2004, ECLI:NL:RBROT:2004:BB2411, S&S 2007, 87).

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

Notification of reservations should be made in time, depending on whether the loss or damage is apparent or not apparent, in writing (e.g. by letter of e-mail etc.) in case of the latest, and all conditions required by article 30 para. 1 should be met. The reservations should give a general indication of the loss or damage. Specific details of the loss or damage are generally not required at this stage (Dorrestein, p. 107).

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

One should bear in mind that the English version of the CMR relates to 'apparent loss or damage' (i.e. clearly visible, according to the standard definition of the word) and the French version uses the term 'pertes ou avaries apparentes' (clairement perceptible à la vue ou à l'esprit). This implies that certain types of losses or damages might not be apparent i.e. clearly visible at the time of delivery, either because of their nature and/or condition and/or extent or for reasons relating to the packaging of the goods, and that the consignee might discover such losses or damages only during the days following the delivery of the goods at destination.

One should also bear in mind that articles 8, 9 and 30 CMR do not contain provisions and/or presumptions relating to the inner condition of the carried goods. Therefore the notion of 'apparent loss or damage' should logically be construed in relation to the condition of the goods as described in the consignment note. Such description (cf. article 6 CMR) and the obligation of the carrier ex article 8 para. 1 CMR to check the apparent condition of the goods and their packaging as well as the prima facie presumption in article 9 para. 2 CMR, only relate to the apparent i.e. clearly visible condition of the goods. In this context, the term 'not apparent' within the meaning of article 30 para. 1 CMR should therefore be construed as 'not clearly visible' i.e. 'pas clairement perceptible à la vue' at the time of delivery and not as relating to the inner condition of the goods.

The notions of apparent and not apparent loss or damage should both refer to the apparent i.e. clearly visible condition of the goods and their packaging (Dorrestein, p. 112), and not to the internal condition of the goods. This does not mean however that the carrier is not liable for loss or damage relating to the deterioration of the inner condition of the goods and their packaging. This only means that the cargo interested party, who bears the burden of proof for the loss or damage, will generally find little or no support in articles 9 and 30 CMR, when such loss or damage relates to the inner condition of the goods (Haak, 219).

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

The absence of reservations only results in a prima facie evidence that the consignee has received the goods in the condition described in the consignment note. Counterevidence against a 'clean' consignment note is therefore admitted. If reservations are made by the consignee in accordance with article 30 para. 1 CMR, the prima facie evidence rule obviously does no longer apply. In such case the sender and/or the consignee still must prove that the goods have been (partly) lost of damage during transport period (i.e. between their acceptance by the carrier and their delivery to the consignee). However counterevidence is not admitted when the condition of the goods had been duly checked by the consignee and the carrier, unless in the case of loss or damage 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 date of checking.

C.A. 's-Hertogenbosch 24-01-1978, NJ 1978, 472: Now that the condition of the goods has been duly checked by the consignee and the carrier during which it was established that 55 of the 1,259 packages transported were visibly damaged on arrival, the consignee will no longer be admitted to prove that in addition to those 55 packages, the contents of 135 packages had suffered damage during transport.

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)

Generally Dutch courts will consider themselves competent to hear a CMR case when at least one of the criteria for compentence enumerated in article 31 para. 1 CMR is met. This means that the claimant may bring an action before a Dutch court: (a) if the parties have designated by agreement a Ducth court, however this choice of forum in generally not considered exclusive but rather optional thus an extra forum to the benefit of the claimant (Haak, p. 320), (b) if the defendant has his ordinarily residence, principal place of business etc. in the Netherlands, (c) if the place where the goods were taken over by the carrier is situated in the Nederlands or (d) if the place designated for delivery is situated in the Netherlands (cf. HR 16-11-1990, ECLI:NL:HR:1990:ZC0044, NJ 1992, 107). In case of multimodal transport CMR is not applicable, therefore an arbitration clause, or a choice of forum clause, in a multimodal transport contract is not subject to article 31 and article 33 CMR (cf. HR 01-06-2012, ECLI:NL:HR:2012:BV3678, NJ 2012/516). The same applies for a freight forwarding contract which refers to an arbitration clause (cf. HR 25-01-2008, ECLI:NL:PHR:2008:BC2657, NJ 2008, 518).

With regard to arbitration in the meaning of article 33 CMR, there is a general view that a valid arbitration clause has exclusive effect in the sense that other jurisdictions mentioned in article 31 para. 1 CMR are no longer available for the claimant. However the question as to whether or not parties have agreed to arbitrate and therefore to exclude other jurisdictions prescribed by article 31 CMR, may give rise to difficulties if the arbitration clause itsel is incorporated

in the general terms and conditions of one of the parties. This is especially the case of Dutch Forwarding Conditions (Fenex). The Dutch case law is divided on this later issue (cf. C.A. The Hague 10-02-2015, ECLI:NL:GHDHA:2015:350, S&S 2015/102 and C.A. The Hague 24-03-2009, ECLI:NL:GHSGR:2009:BH8064 (Handelsveem/Basamro), S&S 2010, 18, versus C.A. 's-Hertogenbosch 08-06-2004, ECLI:NL:GHSHE:2004:AQ5639, S&S 2005, 23).

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	*Article 32 CMR*	*Article 8:1711 DCC*	HR 11 februari 2000, NJ 2000, 420. HR 18 december 2009, NJ 2010 /481. HR 30 maart 2012, NJ 2012/362. *HR 20 december 2013, NJ 2014/295.*	In t*he 2000* judgment, the Supreme Court ruled that art. 32 parag. 1 CMR a*pplies,* without restrictions, to both claims against the carrier as *well as* to claims from the carrier. *In the 2009 judgment the Supreme Court ruled that article 32 CMR also applies to a claim by the CMR carrier relating to negative declaration of liability proceedings.* *In the 2012 judgment, the Supreme Court ruled that the written claim as referred to in art. 32 para. 2 CMR must contain a clear statement for the carrier that he is liable for loss or damage to the goods or delay in transport, but the claim/notice does not have to specify or clarify how the damage arose, the cause of it and the amount of it. The written claim can be sent by fax. The purpose of the suspension is that the claimant is given the opportunity to investigate the cause and extent of the damage*

				in order to try to reach an out-of-court settlement with the carrier. In the 2013 judgment the Supreme Court ruled that if the limitation period has been suspended and this suspension is subsequently lifted by a rejection of the claim by the carrier, a repetition of the notice does not result in the limitation period being suspended again.

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
NO	*Article 31 para. 1 CMR and article 41 CMR*	*Article 630 Dutch Code of Civil Procedure*		*See 7.1 above. Choice of forum clause ex art. 31 para. 1 CMR creates only an extra option for the claimant. Generally such choice does not invalidated the option for a claimant to choose for one of the other jurisdictions enumarated in article 31 para. 1 CMR (Haak, p. 320). C.A. 's-Hertogenbosch 04-03-2008, S&S 2011/34: the choice of forum for the Heilbronn Court (Germany) has no exclusive effect and it merely increases the number of competent courts. By making a choice of forum, Penske cannot be deducted from the rights to bring an action to a*

				jurisdiction which has competence pursuant to art. 31 para. 1 under b CMR. Insofar as the choice of forum is intended to confer exclusive jurisdiction on the court in Heilbronn, it is null and void (art. 41 CMR). However the general view seems to be that an arbitration clause ex article 33 CMR should be exclusive; hence all other jurisdictions mentioned in article 31 para. 1 CMR would no longer be available to the claimant.

PART II (Chapter II, IV, VI)

8. Carrier liability (art. 17 – 20)

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

It is virtually impossible to give an exhaustive list of agents, servants and any other persons of whose services the carrier makes use for the performance of the carriage. In general one should bear in mind that virtually every participant in the actual transport could potentially qualify as such when dealing with goods in transit. Examples of 'agents and servants' and 'other persons' are: employees of the carrier, the actual driver of the vehicle, the subcarrier (cf. C.A. 's-Hertogenbosch 11-11-1999, S&S 2000, 114), freight forwarders etc (Haak, 197). Generally it seems easier to identify such persons when the damage or loss occurred during the actual transport, than when the loss or damage occurred while the goods are temporarily stored, because not everyone there would qualify as persons used for the performance of the carriage (cf. Hof 's-Gravenhage 06-11-2001, S&S 2002, 111).

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

The carrier is liable for the acts and omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when they are acting within the scope of their employment. This liability is based on a narrow interpretation of the terms "acting within the scope of their employment". Therefore the test is whether or not the carrier has made use of the services of the particular agent, servant or person for the performance of the specific carriage and whether or not that particular agent, servant or person was acting within the scope of his employment with regard to the specific carriage. This double test can lead to great challenges for the cargo interests when goods are damaged or lost (stolen) while temporarly in transit at a storage facility of the (sub)carrier. If the thieves are identifed as servants (employees) of the (sub)carrier, this does not mean that the carrier is automatically liable under article 3 CMR and article 29 para. 2 CMR, because one has to prove also that they were actually acting within the scope of their employment, in the narrow sense of the word, with regard to the specific transport operation (cf. HR 22-04-2022, NJ 2022/175 and C.A. The Hague 06-11-2001, S&S 2002, 111).

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 actual content and purpose of the contract of carriage is the safe arrival of the good at destination (Dorrestein, 171). Hence, the main obligation of the carrier, the failure of which gives rise to the carrier's liability, contains, as is now undisputedly established as a rule of transport law, two elements: (a) the preservation and (b) the delivery of the goods (Haak, 132). Within this context the carrier has an obligation of result. The starting point is that he is liable if one or both results are not achieved. Article 17 para. 1 CMR provides that the carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery. The period of liability under article 17 para. 1 CMR ends with the delivery of the goods. However the notion of delivery is not defined in the CMR. The Dutch Supreme Court has rendered a few decisions with regard to construction of the term 'delevery' within the meaning of article 17 para. 1 CMR.

HR 24-03-1995, ECLI:NL:HR:1995:ZC1677, NJ 1996, 317: The view that the term delivery ('livraison') as referred to in art. 17 para. 1 CMR can only be understood as the actual unloading or delivery of the transported goods is incorrect. In cases in which, pursuant to the contract of carriage, the goods must be unloaded by the counterparty of the carrier e.g. the consignee, it is logical to consider the time at which the goods are made available to (put at the actual disposal of) the consignee after their arrival at destination, as the time delivery. In an earlier judgment dated 20 April 1979 (NJ 1980, 518) the Dutch Supreme Court ruled that the CMR does not rule out the possibility that transported goods might remain in the custody of the carrier, after their arrival at destination, pursuant to another contract (agreement) than the contract of carriage, and that in such case, the contract of carriage ends at the time when this other contract enters into force. In its judgment dated 17-02-2012 (ECLI:NL:HR:2012:BT8464, S&S 2012/60) the Dutch Supreme Court ruled that the term delivery within the meaning of article 8:1095 DCC (this also applies to article 17 para. 1 CMR) is not a unilateral act to be performed by the carrier alone, but rather a consensus of will between the parties in the sense that the carrier gives up control over (actual disposal of) the goods transported with the express or tacit consent of the consignee and thereby giving the said consignee the opportunity to exercise actual power (control) over the goods.

As regard to the distinction between (total) loss and delay in delivery, as a result of theft of the transported goods, the Dutch Supreme Court has ruled, in a judgment dated 04-10-2002 (ECLI:NL:PHR:2002:AE4359, NJ 2003, 385) that it follows from the provision of artice 20 para. 1 CMR, pursuant to which provision the person entitled to the goods can only consider them lost if they have not been delivered within the term referred to in said provision, that in the event of theft there is no loss but delay if the goods are recovered and delivered within thirty days following the expiry of the agreed time-limit, or, if there is no agreed time-limit, within sixty days from the time when the carrier took over the said goods.

Finally one should also bear in mind that the CMR does not provide for an exhaustive regulation of the carrier's liability. Art. 17 CMR exclusively regulates the carrier's liability for loss of or damage to goods transported by him, as well as for delay in delivery. The carrier may be liable for damage other than these under the applicable national law (cf. HR 15 April 1994, ECLI:NL:HR:1994:ZC1333, NJ 1995/114 (Cargofoor)).

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

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

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

Number of question	Yes/No	Convention	National law	Landmark cases	Clarification
8.4	NO	B*ut it depends on the circumstances of the case (article 17 para. 1 CMR).*	A*rticles 8:1095 and 8:1096 DCC Article 8:1081 in conjunction with articles 8:361 - 8:366 DCC*	HR 15-04-1994, NJ 1995, 114.	*If the damage to other goods occures during their transport in the same vehicle, pursuant to a CMR transport, then CMR applies.* *But if the damage to the other goods occurs after delivery of the transported goods e.g. contamination of other goods stored in a land tank, then the CMR does not apply to the liability of the carrier regarding the other goods.* *The liability of the carrier under CMR only relates to the total or partial loss of the goods transported by the carrier pursuant to a CMR contract of carriage as well as to any delay in delivery of the transported goods.*
8.5	NO	B*ut it depends on the circumstances of the case.* E*ither article 17 para. 4.b CMR is applicable or article 17 para.*			S*ee 6.1* *If the container and/or trailer is provided by or on behalf of the sender, the carrier undertaking*

		3 CMR in conjunction with article 18 para. 4 CMR			*to provide only a truck and a driver for the performance of the contract of carriage, then the said container and/or trailer is considered part of (packaging) of the goods (cf. art. 17 para. 4.b CMR). If the container and/or trailer is provided by or on behalf of the carrier then it is considered part of the vehicle (cf. article 17 para. 3 in conjunction with article 18 para. 4 CMR).* *The goods refer to the packaged goods as a whole and as presented to the carrier for carriage (Dorrestein, p. 191).*
8.6	YES	A*rticle 20, 21, 22 CMR*	A*rticles 8:1118 DCC, 8:1130 DCC, 8:1138 DCC*	HR 04-10-2002, NJ 2003, 385	T*he 2002 Supreme Court judgment relates to the distinction between the terms 'loss' and 'delay in delivery' in the sense of article 20 para. 1 CMR.* *With regard to article 22 para. 1 CMR The Hague Court of Appeal ruled that in view of the particular circumstances of this case the driver and the carrier should investigate the correct nature of the goods (ship's paint) and the danger they*

					could pose and ascertain whether the intended passage through the Mont-Blanc tunnel was possible, whether or not under specific conditions (C.A. The Hague 26-09-2000, S&S 2001, 120). *In a judgment dated 20-04-1999 (S&S 2001, 116) DC. Breda considered the following. The carrier who accepts bank cheque instead of cash without the sender's permission and who, moreover, apparently fails to ask for (further) instructions before delivery of the goods regarding the way in which the cash on delivery charge (COD) should be collected, or whether bank cheques may suffice, is held to compensate the damage due to non-collection in accordance with art. 21 CMR. According to art. 21 CMR, the carrier that has breached its COD obligations is obliged to compensate the sender up to a maximum of the amount of the COD.*

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 Dutch case law it is practically impossible for a carrier to successfully invoke the exception of "cirsumstances which the carrier could not avoid and the consequences of which he was unable to prevent". In the event of loss of the goods during transport, the carrier can only be relieved of liability pursuant to the said exception if he demonstrates that he has taken all measures reasonably required in the given circumstances from a careful carrier - including the persons whose assistance he uses in the execution of the contract of carriage - in order to prevent the loss (cf. HR 24-04-2009, NJ 2009, 204 and HR 17-04-1998, NJ 1998, 602). This test is applied by Dutch courts in a rather severe manner.

The chance for the carrier to successfully invoke one of the other exceptions mentioned in article 17 para. 2 CMR (i.e. wrongful act or neglect of the claimant, instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, inherent vice of the goods) is significantly greater. In a judgment dated 28-08-2007 (ECLI:NL:GHSHE:2007:BB2812) C.A. 's-Hertogenbosch considered that if the temperature of the goods (pears) at loading was too high or if the goods were not sufficiently pre-cooled and this led to freezing of the goods during transport, this should in principle be regarded as an inherent defect within the meaning of Art. 17 para. 2 CMR, because this damage is not caused by the nature of the pears, but rather by the condition in which the goods were presented to the carrier.

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

Under Dutch case law the bulk of disputes relating to article 17 para. 4 CMR concerns article 17 para. 4 sub c CMR i.e. handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf of the sender or the consignee. In a judgment dated 18-05-1979 (HR 18-05-1979, NJ 1980, 574) the Dutch Supreme Court ruled as follows. Article 17 para. 4 CMR makes an exception to the general provision of article 17 para. 1 CMR, in so far as the carrier is relieved of his liability when the loss or damage arises from the special risks inherent in one or more of the following (i.e. six) circumstances or groups of circumstances. Pursuant to article 18 para. 2 CMR it is sufficient for the carrier to establish that in view of the circumstances of the case, the loss or damage could be attributed to the special risks referred in article 17 para. 4 CMR. The claimant shall however be entitled to prove that the loss or damage was not, in fact, attributable either wholly or partly to one of those risks. According to the preamble of article 17 para. 4 CMR, the circumstances referred to in this paragraph have in common that they entail a special danger/risk that damage will occur. In the view of the drafters of the CMR, with regard to para. 4 sub c, this danger/risk is already present when the handling, loading, stowage or unloading of the goods is carried out by the sender, the consignee or persons acting on behalf of the sender or the consignee, without need for the carrier to prove that these actions were wrong. Unlike in the circumstances referred to in article 17 para. 4, sub b and sub e, and unlike as determined with regard to the term "chargement" in article 27 para. 3 sub c. of the Convention on the Carriage of Goods by Rail (CIM) concluded in Geneva on 25 Oct. 1932 — which Convention served as a model when the CMR Convention was drawn up — there is no condition in article 17 para. 4 sub c that those actions carried out by the sender, the consignee or persons

acting on behalf of the sender or the consignee, must be defective. This means that for the carrier who invokes the provisions of article 17 para. 4 sub c, in order to be relieved of liability ex article 17 para. 1 CMR, it is sufficient to prove, in case of a dispute, that the handling, loading, stowage or unloading of the goods was carried out by one or more of the persons referred to in article 17 para. 4 sub c and that, in view of the circumstances of the case, the loss or damage of the carried goods could have resulted from such actions. In a later judgment (HR 18-06-1982, NJ 1983, 384) the Dutch Supreme Court considered the following: the circumstances as assumed by the Court of Appeal may preclude the carrier's counterparty from invoking errors made in the loading and stowage that it has provided itself. This will in particular occur if the carrier could assume that the loading and stowage had taken place properly, which may be based on the fact that the other party has already been used to taking care of the loading and stowage for a long time. In addition, it is also conceivable — which the Court erroneously ruled out — that a tacit agreement as to the carrier's responsibility may be inferred from such a custom.

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	*Articles 23 - 28 CMR* *There are some recent developments in Dutch case law relating to the question whether or not 'fear of loss' should be compensated under CMR. It seems that the Dutch literature is not uniform. According to Haak (p. 227) damage can be understood to mean a substantial change in the condition of the goods.*	*Article 8:1105 DCC*	HR 15-04-1994, NJ 1995, 114 HR 11-10-2002, S&S 2003, 61 HR 14-07-2006, NJ 2006, 599 *There is also some case law from lower courts relating specifically to the calculation of the compensation ex. article 23 para. 3 and 4 CMR.*	In *the 1994 judgment the Supreme Court ruled that the art. 17, 23 and 28 CMR only concern the carrier's liability for loss of or damage to the goods transported by him. Liability for other matters is governed by the applicable national law.* *In the 2006 judgment the Supreme Court ruled that it is consistent with the purpose and intent of article 23 para. 4*

		However, Dorrestein (p. 213) believes that although the terms loss and damage linguistically point in the direction of material damage to the goods, it is clear from the principles of article 23 CMR that it ultimately refers to total or partial loss of value of the goods. This later view is based on a broader construction of the term 'damage'. *Although some case law seem to construe the term damage in a broader sense, the majority of Dutch case law is still based on a narrow interpretation of the term damage, in the sense of a substantial change in the condition of the goods.*			*CMR, to assume that the costs referred to in article 23 para. 4 CMR, are costs directly related to (the normal performance of) the transport. These costs therefore do not include the costs which, under the relevant customs law, are related to the loss of the goods due to the carrier's failure to fulfill its obligations under the contract of carriage.*
10.2	YES	a*rticles 24 and 26 CMR*	A*rticles 8:1106 and 8:1107 DCC*	C*ase law from lower courts:* *- D.C. Utrecht 30-10-1996, S&S 1998, 93* *- C.A. 's-Hertogenbosch 04-02-1986, S&S 1987, 25*	DC. U*trecht (1996): In view of the fact that the value of the goods had been determined in advance in writing at DM 175,000, upon which a 3% premium had been paid, this qualifies as a basis for calculation of the owed compensation (Art. 24 CMR). C.A.'s-Hertogenbosch (1986): article 26 CMR offers the sender the possibility to*

					determine the amount of a special interest in delivery in the event of loss or damage when entering into the contract of carriage. Therefore it is not unreasonable, if the sender does not make use of this option, that additional damage (such as VAT paid by the sender and non-refundable fine) is not for the account of the carrier.

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)

This is almost certainly the CMR provision which has led to most case law from the Dutch Supreme Court during the last two decades. The standard test developed by the Supreme Court for the application of article 29 CMR has been constant and strictly applied since the judgments of the Supreme Court dated 5 January 2001 (HR 05-01-2001, NJ 2001, 391 and 392), in which the Supreme Court considered the following.

Article 29 para. 1 CMR provides that the carrier shall not be entitled to avail himself of the provisions of this Chapter which exclude or limit his liability or which shift the burden of proof if the damage was caused by wilful misconduct - on the part of himself or his subordinates (i.e. agents, servants and any other persons) whose services he uses for the performance of the transport - or by such default as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct. Under the applicable Dutch law, wilful misconduct is understood to mean an act or omission that must be regarded as reckless and with the knowledge that the damage would probably result from it. Such an act or ommission occurs when the person who behaves in this way is aware of the danger associated with his conduct and is also aware that the likelihood of the danger occurring is significantly greater than the probability that it will not happen, but nevertheless does not let this deter one from doing so.

Hence under Dutch law the test for unlimited liability ex article 29 para. 1 CMR is a complex one witch is based on a mix of objective (i.e. "likelihood of the danger occurring is significantly greater than the probability that it will not happen") and subjective criteria (i.e. the subjective awareness of the person whose behavior is subject to the test). The importance of the subjective componant of the test is underlined in the following reasoning of the Supreme Court: "In ruling that the driver must have known or should have understood that the risk of theft was very considerable, the Court of Appeal applied the wrong test. If it can be said that the driver should have known or should have understood that the probability that the container would be stolen was greater than the probability that this would not happen, then this implies that the driver was in fact not aware of this concrete danger". In this regard reference can also be made to later judgments of the Supreme Court in which this test has consistantly and strictly been applied (HR 22-02-2002, NJ 2002, 388; HR 11-10-2002, NJ 2002, 598; HR 29-05-2009, NJ 2009, 245; HR 10-08-2012, NJ 2012/652;). With regard to article 29 para. 2 CMR, see 8.1 and 8.2 above.

*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?*

See 11.1 above.

12. Specific liability situations

Situation	Liability of the carrier Yes/No	Ambiguity of case law[4]	Clarification
Theft while driving	YES	Rarely	*Yes, unless there are circumstances which the carrier could not avoid and the consequences of which he was unable to prevent (article 17 para. 2 CMR), which is a very strict test. The carrier can only successfully obtain an exemption from liability pursuant to art. 17 para. 2 CMR, if he demonstrates that he has taken all measures reasonably required in the given circumstances from a careful carrier - including the persons whose assistance he uses in the execution of the carriage - in order to prevent the theft (cf. HR 24-04-2009, NJ 2009, 204 and HR 17-04-1998, NJ 1998, 602).*

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

Theft during parking	YES	Rarely	Yes, unless there are circumstances which the carrier could not avoid and the consequences of which he was unable to prevent (article 17 para. 2 CMR), which is a very strict test. The carrier can only successfully obtain an exemption from liability pursuant to art. 17 para. 2 CMR, if he demonstrates that he has taken all measures reasonably required in the given circumstances from a careful carrier - including the persons whose assistance he uses in the execution of the carriage - in order to prevent the theft (cf. HR 24-04-2009, NJ 2009, 204 and HR 17-04-1998, NJ 1998, 602).
Theft during subcarriage (for example an unreliable subcarrier)	YES	Rarely	Yes, unless there are circumstances which the carrier could not avoid and the consequences of which he was unable to prevent (article 17 para. 2 CMR), which is a very strict test. The carrier can only successfully obtain an exemption from liability pursuant to art. 17 para. 2 CMR, if he demonstrates that he has taken all measures reasonably required in the given circumstances from a careful carrier - including the persons whose assistance he uses in the execution of the carriage - in order to prevent the theft (cf. HR 24-04-2009, NJ 2009, 204 and HR 17-04-1998, NJ 1998, 602) . I*n case of unreliable subcarrier, which mostly occurs when the carrier contracts unknown subcarriers via online freight platforms, the carrier runs a high risk of unlimited liability if the goods are subsequently untraceable.*
Improper securing/lashing of the goods	NO	Sometimes	I*t depends!* *If the sender contractualy agrees to perform handling, loading, stowage or unloading of the goods (article 17 papra. 4 sub c CMR) and the damage results therefrom then carrier is in priciple not liable (HR 18-05-1979, NJ 1980, 574, C.A. The Hague 07-07-2015, S&S 2016/110). A carrier under the CMR is generally not obliged to load/unload the goods. But, express or tacit agreements or trade customs may lead to the conclusion that the carrier is contractually obliged to load/unload the goods (C.A. Arnhem-Leeuwarden 21-06-2016, S&S 2017/44).* *If the carrier has the contractual duty to perform loading/unloading/stowage/securing/lashing of the goods and this is not done properly, leading to damage of the goods or delay in delivery, then the carrier is therefore liable (Haak, 182).* *Regardless of who is contractually responsible for these activities, some case law seem to suggest that the carrier has always the duty to check i.e. verify the securing/lashing (C.A. 's-Hertogenbosch 19-03-2013, S&S 2014/67; C.A. The Hague 07-07-2015, S&S 2016/110). However, in a decision dated 18-06-1982 (NJ 1983, 384) the Dutch Supreme Court ruled that circumstances may preclude the carrier's counterparty (i.e. sender, consignee) from invoking errors made in the loading and stowage that he performed himself. This will in particular occur if the carrier rightfully trusted that the loading and stowage were properly performed, because in fact the counterparty had already been used to taking care of the loading and stowage etc. for a long time.*

Improper loading or discharge of the goods	NO		I*t depends! See above clarification regarding improper securing/lashing of the goods.*
Temporary storage	YES	Rarely	Yes, unless there are circumstances which the carrier could not avoid and the consequences of which he was unable to prevent (article 17 para. 2 CMR), which is a very strict test. The carrier can only successfully obtain an exemption from liability pursuant to art. 17 para. 2 CMR, if he demonstrates that he has taken all measures reasonably required in the given circumstances from a careful carrier - including the persons whose assistance he uses in the execution of the carriage - in order to prevent the theft (cf. HR 24-04-2009, NJ 2009, 204 and HR 17-04-1998, NJ 1998, 602). *Temporary storage in connection with CMR transport is generally not considered an autonomous contract / activity, hence CMR liability regime applies. However, theft of the goods during temporary storage does not always lead to unlimited liability of the carrier (cf. HR 22-04-2022, NJ 2022/175).*
Reload/transit	YES	Rarely	A*ccording to article 17 para. 1 CMR t*he carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.
Traffic	YES	Rarely	Yes, unless there are circumstances which the carrier could not avoid and the consequences of which he was unable to prevent (article 17 para. 2 CMR), which is a very strict test. The carrier can only successfully obtain an exemption from liability pursuant to art. 17 para. 2 CMR, if he demonstrates that he has taken all measures reasonably required in the given circumstances from a careful carrier - including the persons whose assistance he uses in the execution of the carriage - in order to prevent the theft (cf. HR 24-04-2009, NJ 2009, 204 and HR 17-04-1998, NJ 1998, 602).
Weather conditions	YES	Rarely	Yes, unless there are circumstances which the carrier could not avoid and the consequences of which he was unable to prevent (article 17 para. 2 CMR), which is a very strict test. The carrier can only successfully obtain an exemption from liability pursuant to art. 17 para. 2 CMR, if he demonstrates that he has taken all measures reasonably required in the given circumstances from a careful carrier - including the persons whose assistance he uses in the execution of the carriage - in order to prevent the theft (cf. HR 24-04-2009, NJ 2009, 204 and HR 17-04-1998, NJ 1998, 602).
Overloading	YES	Rarely	According to article 17 para. 1 CMR the carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.
Contamination during / after loading	YES	Rarely	According to article 17 para. 1 CMR the carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery. I*t depends on which party is liable for loading the goods.*

Contamination during / after discharge	YES	Rarely	According to article 17 para. 1 CMR the carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery. *The contamination of other goods than the carried goods does not fall under CMR. The CMR is no longer applicable after delivery. Hence contamination of other goods than the carried goods and contamination of the carried goods after proper delivery are subject to the applicable national law.*

13. Successive carriage (art. 34 – 40)

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

Generally speaking one could say that the liability of every CMR carrier - whether a 'single' carrier or a successive carrier - is anchored on article 17 para. 1 CMR. Articles 34-40 CMR only contain specific provisions relating to a single contract of carriage performed by successive carriers, but these specific provisions do not alter the principle of liability contained in article 17 para. 1 CMR.

Under Dutch case law and literature there is a notable distinction to be made between successive carriers and the so called 'paper carriers'. The later cannot qualify as successive carriers ex article 34 et. seq. CMR, although such 'paper carriers' might be party to a CMR contract of carriage wich qualifies as successive carriage ex article 34 CMR (e.g. a contract of carriage in which only the CMR carrier(s), who have actually participated in the performance of the contract, qualify(ies) as successive carrier(s), while (all) other 'paper' carrier(s), who did not perform any part of it, is(are) not successive carrier(s) (cf. Haak, p. 121-122). This approach is based on a broad construction of article 34 CMR.

In a judgment dated 11-09-2015 (HR 11-09-2015, NJ 2016/219) the Dutch Supreme Court ruled as follows. Neither the text of article 34 CMR, nor those of the other provisions of Chapter VI CMR containing 'Provisions relating to carriage performed by successive carriers' (art. 35-40 CMR), compels to construe article 34 CMR as meaning that there can be no successive carriage if the main carrier and possibly other carriers are exclusively 'paper' carriers, i.e. they do not actually carry out any part of the CMR transport themselves, but they rather choose to outsource the whole transport in its entirety. Such a broad construction of art. 34 CMR serves better the intended goal of strengthening the positions of the cargo interested party and the carrier seeking redress, and is also in line with the prevailing view in the case law and literature in countries which are party to the CMR Convention.

With regard to article 36 CMR The Hague Court of Appeal considered the following in a judgment dated 23-06-2020 (S&S 2020/105). The purport of article 36 CMR is that in case of successive carriage as referred to in Chapter VI of the CMR, the cargo interested party can recover from either its own contractual counterparty (the first carrier), the last carrier, or the carrier who caused the damage. The cargo interested party thus gets an additional recovery debtor. Article 36 CMR does not provide that intermediate carriers in the chain, who cannot be regarded as successive carriers themselves, have no recourse

against their contractual counterparty. The same does not follow from Article 37 of the CMR, which regulates mutual recourse between the carriers who have acceded to the contract of carriage between the main carrier and its sender as referred to in article 34 of the CMR. After all, as a paper carrier, is not a successive carrier and has therefore not acceded to the contract between the main carrier and its sender of the goods.

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

Pursuant to article 37 sub a CMR, the carrier through whose actions the damage was caused shall in principle be solely liable for the compensation pursuant to article 17 et seq. CMR. Article 37 sub b CMR is a logical addition to sub a (Haak, p. 125). If it cannot be ascertained to which carriers liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all carriers as provided for in article 37 sub c CMR. In the later case the principle of solidarity between carriers ex article 37 sub c CMR entails that the collective burden of the liability is distributed among the successive carriers in proportion to their individual benefits. The remuneration received by each successive carrier is used as the criterion for sharing the burden of the liability (Haak, p. 126).

A CMR 'paper' carrier who has not performed (any part of) the transport himself can without objection be included under the regulation on successive carriage, because such a carrier can, in principle, evade the collective obligation to contribute via article 37 sub a in conjunction with sub c CMR. Such carrier also cannot be held liable pursuant to article 36 CMR (Haak, p. 126).

With regard to the case law, the Supreme Court considered the following in a judgment dated 11-09-2015 (HR 11-09-2015, NJ 2016/219). According to the wording of art. 39 para. 1 CMR, construed in accordance with their ordinary meaning and taking also into account their context, the carrier on whom on the basis of articles 37 and 38 CMR recourse is exercised, cannot put forward a defense that relates to the liability or the amount paid to the third party (the cargo interest). Article 39 para. 1 of the CMR excludes such defense if "the compensation has been determined" by court decision. Such defense is only excluded if the carrier on whom on the basis of articles 37 and 38 CMR recourse is exercised, has been duly notified of the lawsuit between the redress-seeking carrier and the third party and has had the opportunity to join or intervene in such lawsuit. Article 39 para. 1 CMR does not prevent the carrier against whom recourse is being exercised from making defenses in the recovery procedure that could not be raised in the proceedings between the carrier seeking redress and the third party, such as defenses relating to the recovery claim itself. Nor does article 39 para. 1 CMR prevent that the carrier against whom recourse is exercised to invoke a contractual stipulation agreed between him and the redress-seeking carrier, which deviates from articles 37 and 38 CMR, and which is based on article 40 CMR.

With regard to article 37 CMR the Court of Appeal of Arnhem-Leeuwarden considered the following. In accordance with the recourse provision in article 37 CMR, successive carriers can have mutual recourse against each other. The carrier who has paid compensation under the provisions of the CMR has a right of recourse for the principal, interest and costs against the carriers who participated in the performance of the contract of carriage. In view of the text of

article 37 CMR (the English text refers to compensation "together with interest thereon and all costs and expenses incurred by reason of the claim") and considering the nature and purport of this provision (which provides a quick and simple settlement of disputes between successive carriers), the right of recourse under the aforementioned provision only arises if (and insofar) the damage has been settled by the carrier seeking redress (C.A. Arnhem-Leeuwarden 29-03-2018, ECLI:NL:GHARL:2018:2964).

In a judgment dated 24-02-2021 the Oost-Brabant District Court ruled as follows. It follows from Articles 37 and 39 CMR that a carrier can take recourse against the other (liable) carrier(s). Recourse means that no more can be claimed than the carrier himself has paid. The amount to be paid is also limited by the CMR. Hence, if one of the successive carriers has paid more than what the CMR entitles, that successive carrier cannot recover this excess from other liable successive carriers (DC. Oost-Brabant 24-02-2021, S&S 2021/91).

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

The term substitute carrier is not defined by CMR, while a definition of the term successive carrier can be construed from article 34 CMR. However one could perhaps try to make a distinction between successive carriers and substitute carriers by reference to the difference of scope between article 3 CMR and 34 CMR. The scope of article 3 CMR appears to be considerably broader than that of article 34 CMR. After all, article 3 CMR relates, among others, to "any other persons" (including any other carriers) of whose services the CMR carrier makes use for the performance of the contract of carriage. Article 34 CMR however only applies to a limited group of those ("any other persons" within the meaning of Article 3 CMR), namely "any other" carriers who acceed to the "single" contract of carriage between the sender and the main carrier. All other carriers, not being the main carrier that has contracted with the sender, and not being carriers acceeding to the "single" contract referred to in article 34 CMR, are indeed "other persons" within the meaning of article 3 CMR, but not successive carriers within the meaning of article 34 CMR. So all these "other" carriers that do fall under the ambit of article 3 CMR, but not under that of article 34 CMR, would in principle be regarded as substitute carriers.

With regard to the difference in legal regimes under the CMR, one should also note that there is a substantial difference in the recourse actions between successive carriers compared to the recourse actions between substitute carriers. While the recourse actions between successive carriers are governed by articles 37-40 CMR the recourse actions between subcarriers should in principle depend on their contractual relationship and/or on artikel 28 CMR.

In a judgment dated 23-06-2020 (S&S 2020/105) The Hague Court of Appeal ruled as follows. Article 34 of the CMR also applies to a case where the main carrier and possibly some other carriers are exclusively paper carriers. The paper carrier who did not actually perform any part of the transport cannot be regarded as a successive carrier (HR 11-09-2015, S&S 2016/1). This broad interpretation of the notion of successive carriage does not mean that E-Logistics, as a paper carrier, does not have a right of action against Vis, who is also another paper carrier within the same chain of contracts. The purport of article 36 CMR is that the cargo interested party will receive an additional recovery debtor. This article does not stipulate that intermediate carriers within the chain,

that are not themselves successive carriers (i.e. paper carriers), have no recourse against their contractual counterparty. This also cannot be deduced from article 37 CMR. That article regulates the mutual recourse between the carriers who have acceeded to the contract of carriage between the main carrier and the sender. As a paper carrier, Vis has not acceded to that contract of successive carriage.

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	Additional protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the electronic consignment note,Geneva, *20 February 2008*	*Carriage of Goods by Road Act (article 2.13) Ministerial Regulation on road transport of goods (article 15 para.3)*		A*pplicable since 05 June 2011.*

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?

For further details please consult the website of SVA (https://www.sva.nl).