



Guideline comparing the legal regimes

CMR-COTIF/CIM-SMGS

Introduction

In September 2013, the International Rail Transport Committee (CIT)¹ and IRU² organised a conference on multimodality in Bern. This provided an occasion to review various texts covering multimodal transport such as the 1980 UNECE Convention (ratified by only two states and which never entered into force), the UNCTAD/ICC Rules, Article 2 of the CMR, various articles of the COTIF/CIV/CIM (24 COTIF, 1 §§ 2-3, 31 CIV, 1 §§ 3-4, 38 CIM) for rail-road and rail-sea traffic of both passengers and freight, the Montreal Convention for carriage by air and, lastly, the future Rotterdam Rules for carriage by sea. However, the conference mainly highlighted that there are still grey areas, enough at least to consider that the solution to govern multimodal transport has not quite been found. Because one single transport mode does not exist and cannot fulfil the growing economic needs for door-to-door delivery of goods, the conference organisers have found it all the more necessary to consider which legal bridges are required to help this development whilst permitting balanced and harmonised relationships between the various transport modes. Now while statutory regimes at intergovernmental level are only conceivable in the longer term, contractual relationships might more rapidly provide an appropriate basis for carrying out multimodal transport operations.

Therefore, at the end of the conference, the CIT and IRU decided to initiate a common reflection which ultimately aims to identify and put forward legal models of collaboration between first of all rail and road transport. However, the first hurdle in such an approach is ignorance of the actors of the legal rules governing international carriage of goods for each of the two modes considered. And to work together, one has to know one another. So what are the similarities or differences between international instruments such as CMR, CIM UR or SMGS and the Standard Contracts and

General Terms and Conditions drawn up by IRU and CIT, on such important issues as transport documents, the liability regime for lost and damage of the goods and late delivery, limitation of the liability, compensation amounts and rules and also formal procedures?

Nevertheless, we need to remember that the law of road and railway carriage have evolved organically as a function of the characteristics of modes and those characteristics naturally differ. Although we can see a family likeness between the basic conventions, a likeness that becomes evident when they are amended (for example, the current CIM Uniform Rules were inspired by the CMR which itself followed rail practices), it is nonetheless still true that the (numerous) differences which can be seen between the modes of transport make any thought of a single regime totally inconceivable. The international CIM and CMR Uniform Rules have influenced each other since they came into force and have contributed to their continuing development in terms of their legal scope. The CMR, for example, which apply to international carriage by road, were developed in 1956 under the influence of the CIM UR from 1952 that were in force at that time and in turn contributed to their further development as part of the COTIF reform of 1999, the main aim of which had been to bring about greater harmonisation between the CIM and CMR (in regards of the principles of the reform in the Vilnius Protocol of 1999).

Also on 1st of July 2015, the new version of SMGS 1951 (Convention concerning International Goods Traffic by Railway) entered into force after 10 years revision work, complete with the associated staff instructions and implementing provisions. The decision of principle for the revision work was taken in 2005 at ministerial level by the parties to the SMGS Agreement. The official language versions are Russian and Chinese. According to information provided by the OSJD (Organisation for Co-operation between Railways)³, which is responsible for secretarial duties relating to the SMGS, the amendments that have been made do not affect the funda-

1 *The International Rail Transport Committee (CIT) is an association of some 213 railway undertakings and shipping companies which provide international passenger and/or freight services. 133 organisations are members in their own right, 80 organisations are linked indirectly by being members of CIT associate members. The CIT is an association under Swiss law and is based in Bern.*

2 *IRU is the world's road transport organisation, promoting economic growth, prosperity and safety through the sustainable mobility of people and goods. Founded in 1948, IRU has members and activities in more than 100 countries.*

3 *The Organisation for Co-operation between Railways is an international Organisation (OSJD) established at the Railway Ministers Conference on 28th June 1956 in Sofia. Among the OSJD members there are transport ministers and central bodies, responsible for the railway transport from 28 European and Asian countries.*

mental principles of the SMGS. During the revision of the SMGS, in line with the CIM Uniform Rules, the amendments completed as a result of the reform processes carried out primarily by individual railway undertakings and the separation of infrastructure and operations, including the role of private carriers, were taken into account.

Harmonisation between the three legal systems CMR, CIM and SMGS is limited for operational reasons. On the one hand, rail transport and road haulage differ in terms of their operational procedures: the driver on the road has a “close relationship” with the goods he is delivering, since he is more closely involved in the loading of the vehicle than is the case in rail operations, where in some cases entire wagons or trains are loaded in sidings. On the other hand, deviations between the CIM and CMR tend to be accepted, because CIM provisions are more favourable for the customer or provide legal clarity.

It therefore seems necessary to help carriers in the various modes to develop partnerships. The role of organisations such as IRU and the CIT is precisely to draw up and to promote contractual models for working together. Collaboration between the various international organisations and their General Secretariats without doubt will allow decisive steps to be taken towards the implementation of multimodality. Contractual bridges between the rules created by the various professional organisations must be created in order to permit rapid implementation of contractual approaches based on which it may perhaps be possible to draw up an intergovernmental convention in the long term.

Thus the first step of this joint work was to conduct an in-depth comparative analysis of the three existing agreements CMR 1956 – COTIF/CIM 1999 – revised SMGS 2015 and of the documents or model contracts which IRU and CIT drafted and recommended for their members. At this stage, it is important to highlight the scope of this work which is unprecedented, at least with such a focused approach, as a prerequisite for the second step involving a reflection on partnership models between carriers to perform multimodal transport. Additionally, the presentation of these data has deliberately been kept simple, in the form of an easy-to-use matrix, so that all transport operators who are not lawyers may have easy access to this guide – Part I “Synthesis” and Part II “Comparative Matrix.”

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Part I

Synthesis

Main Principles underlying the COTIF/ CIM – CMR – SMGS legal regimes

Key:

- COTIF/CIM – refers to the Uniform Rules concerning the Contract of International Carriage of Goods by Rail, as Appendix B to the Convention concerning International Carriage by Rail (COTIF) of 9 June 1999, in force since 1 July 2006.
- CMR – refers to the Convention on the Contract for the International Carriage of Goods by Road of 19 May 1956, in force since 2 July 1961.
- SMGS – refers to the Agreement concerning International Freight Traffic by Rail, in force since 1 November 1951, completely revised on 1 July 2015.

I. Scope of application

1. The COTIF/CIM and CMR shall apply to every contract of carriage of goods by rail (COTIF/CIM) or by road in vehicles (CMR) for reward when the place of taking over of the goods and the place designated for delivery are situated in two different countries, of which at least one is a Member State. If only one country is a Member State, the CIM Uniform Rules shall only apply if the parties to the contract agree that it shall be subject to the CIM Uniform Rules.

The SMGS shall apply to every contract of international through-carriage of goods by rail on railway lines, between single railway stations, on different gauges or by railway-ferry. This is a mandatory law for the international contract of carriage. The SMGS stipulates that the Agreement applies subsidiary to other international agreements. Unlike the CIM, the SMGS only applies if the carriage of goods takes place between railway stations that are situated in two different Member States.

2. Multimodal transport is treated differently in the COTIF/CIM and CMR Conventions. The COTIF/CIM applies to road transport, where international carriage includes carriage by road in the internal traffic of a Member State as a supplement to trans-frontier carriage by rail (the “rail+” approach) – e.g. because the place of taking over of the goods cannot be reached by rail. On the other hand, the CMR applies to combined transport when the road vehicle containing the goods is itself carried over part of the journey by another mode of transport (sea, inland waterways, air or rail) and goods are not unloaded from the vehicle (“mode-on-mode” approach).

In the case of multimodal transport by road and rail, the scopes of application of the COTIF/CIM and CMR can come into legal conflict and overlap – e.g. vehicles loaded in accordance with the CMR are used as a rolling highway by rail with a CIM consignment note (RoLa service).

With regard to the scope of application in the case of multimodal transport, whether or not the goods are unloaded from the vehicles is decisive: if goods are unloaded then CMR does not apply (Article 2.1 CMR). If transport by road is international or if it remains national and is not merely a supplement to trans-frontier carriage by rail, then CIM Uniform Rules are not applicable (a contrario from Article 1 § 3 CIM).

The SMGS is only applicable to international through-railway-ferry traffic where the parties to the Convention have declared the waterway sections to be open for such carriage. In contrast to the SMGS, the CIM Uniform Rules use a broader “rail+” approach that also applies to road transport when international carriage includes carriage by road for national traffic.

II. Documentary requirements

1. All three Conventions – the CIM, SMGS and CMR – apply the same documentation requirements. According to paragraphs 1 and 2 of Article 6 CMR, Article 7 § 1 CIM and Article 15 § 1 SMGS, the consignment note must contain these particulars.
2. In the COTIF/CIM and SMGS, the electronic consignment note is a functional equivalent of the paper version and this is provided for directly in the Convention (Article 6 § 9 CIM, Article 15 § 4 SMGS). For the CMR, however, the

electronic consignment note is stipulated exclusively by priority in an Additional Protocol dated 20 February 2008, which entered into force on 5 June 2011.

III. Contractual relations

1. The main principles concerning the consignor/sender's responsibilities are the same. The consignee's right to dispose of the goods is different, however: the principle is inverted. According to the CMR, the consignee is only entitled to amend the contract of carriage from the point at which the consignment note is made out if the sender has entered a statement to that effect on the consignment note (Article 12.3 CMR). According to the CIM, it is the consignee who has this right unless the consignor has included an indication to the contrary (Article 18 § 3 with Article 18 § 2 lit. d). According to the SMGS, in principle, the consignor has the right to dispose of and amend the contract of carriage until the consignment note is delivered to the consignee or the goods have arrived at the border station of entry into the country of destination, if the carrier already has a written declaration by the consignee (Article 25 § 5 SMGS).
2. Regarding the carriers' obligations, the principles in the CMR and CIM are comparable, but under the CMR the sender is entitled to require the carrier to check the contents of the packages (Article 8.3 CMR). In the CIM Uniform Rules, there is no such obligation. In this respect, the conditions of rail operation differ from those of road transport. According to both the CIM and CMR, the carrier must hand over the original consignment note and deliver the goods to the consignee.
3. The provisions of all three Conventions cannot be derogated from under special conditions. Under CIM, in contrast to CMR, a carrier may assume a liability greater and obligations more burdensome than those provided for in the CIM, if this is in the interest of the customer (Article 5, last sentence, CIM)

IV. Provisions concerning liability

1. The COTIF/CIM, SMGS and CMR all contain the principle of the carrier's strict liability (obligation of result).
2. The COTIF/CIM and CMR foresee exemption from liability in case of general grounds and special risks, and their provisions are similar.

In the case of general grounds for exemption from liability (Article 17.2 CMR/Article 23 § 2 CIM): the carrier has to prove that the loss, damage or delay was caused by one of the circumstances set out in those general grounds. He can thus be relieved of liability.

3. According to Article 17.4 CMR/Article 23 § 3 CIM (exemptions from liability), special privileges are granted to carriers for the specific risks of railway or road transport. The claimants have to prove that those risks were not the cause of the loss or damage (reversal of the burden of proof in accordance with Article 18.2 CMR/Article 25 § 2 CIM). In the SMGS, the exemptions from liability for the carrier are extensive and there are a number of cases where the carrier is a priori relieved of that liability. In these cases also according to the SMGS the consignee or consignor have the right to prove the contrary (Article 41 § 2 SMGS).

4. Whereas the CIM and SMGS clearly mention delay in delivery, the CMR uses the expression “the reasonable time allowed to the carrier” in cases in which no time limit has been agreed.
5. All three Conventions specify a timeframe for claiming the loss of goods (presumption of total loss). The purpose of this rule is to enable the claimant to seek compensation for loss of goods.
6. The liability of successive carriers (several independent carriers who participate in a carriage of goods; during transit, each carrier is handing over the goods and consignment note to the next carrier) is established in all three Conventions, based on the principle of common liability, although there are some differences in its assignment. Under the SMGS, there are no substitute carriers.
7. In the CIM, SMGS and CMR, carriers are liable for their servants and agents. All three Conventions specify that such liability refers to cases where carriers make use of those persons for the performance of the carriage, when those servants and other persons are acting within the scope of their functions/employment.

V. Compensation

1. All three Conventions specify how compensation should be calculated. Whereas the SMGS foresees full compensation up to the amount of the value of the goods, the COTIF/CIM and CMR foresee a limit to compensation. However, the limits of compensation are different: CMR (Article 23.3: replaced by Protocol to the CMR Convention of 5 July 1978, in force since 28 December 1980) has lower limits (8.33 SDR*/kg vs CIM 17 SDR*/kg). (SDR* = Special Drawing Rights)
 2. The CMR only foresees compensation not exceeding the carriage charges for delay, whereas the CIM foresees four times the carriage charge for delay. In case of a delay, the SMGS provides for gradual compensation up to 30% of the carriage charge.
 3. Under certain conditions, both Conventions allow the value of the goods and a special interest in delivery. For CMR, apart from the above cases, Article 23.6 prohibits higher compensation. In contrast to the CMR, Article 5 of the CIM stipulates that the carrier may assume a liability greater and obligations more burdensome than those provided for in the CIM.
 4. Regarding the loss of the right to limit responsibility, there is a substantial difference between the CIM and CMR. Although the CMR does not define wilful misconduct or default equivalent to wilful misconduct, the CIM establishes, ex lege, the loss of the right to invoke the limits of liability (Article 36 CIM). The lack of such a definition in the CMR has created divergences in the jurisprudence, as evidenced in the “forum shopping” by claimants. The SMGS does not foresee any loss of the right to invoke the limits of liability because of the possibility of full compensation up to the amount of the value of the goods.
- reservations related to the non-apparent loss or damage of the goods or delay in delivery, the CIM and SMGS lay out the need for a formal report. According to Article 42 § 1 CIM, the carrier must draw up a formal report in cases of partial loss or damage. The court or judge is free to consider the content of this formal report as free appraisal of evidence. Article 29 § 1 SMGS specifies the cases in which the carrier must draw up a formal report.
2. The CMR and CIM Conventions (Article 30.3 CMR/Article 43 § 1 CIM) foresee the use of the claims procedure before bringing any legal action against the carrier, also if this is only optional. Under the SMGS, an initial formal claims procedure is mandatory, otherwise the customer is not entitled to bring a legal action before the national courts. The CMR, CIM and SMGS allow the period of limitation may be suspended by a written claim.
 3. The Conventions foresee different time limitations on making a claim. The CIM and CMR share the basic limitation of one year; the SMGS provides for a basic limitation of only nine months. But whereas the CMR provides for an extension of this period to three years in cases of wilful misconduct, the CIM only extends this period to two years, although it can grant this extension in more situations. The SMGS does not provide for such an extension in cases of wilful misconduct. The legal consequences for future legal action, arising from the time limitations in the CIM and CMR, are based on national law (except Article 32.4 CMR/Article 48 § 4 CIM). In this case, the SMGS foresees an exhaustive rule, ex lege, whereby claims made after the time limitation has passed are not valid (Article 48 § 4 SMGS).
 4. All three Conventions allow for the possibility of a jurisdiction clause. The parties are only allowed to choose the general jurisdiction of a court in a particular Member State and not the jurisdiction of a specific court in that state.
 5. All three Conventions also allow the right of recourse. The provisions of the CIM, SMGS and CMR are similar, although there are some differences. According to Article 41 CIM and Article 46 § 9 SMGS, any legal action concerning liability, on whatever grounds, may be brought against the carrier. There is no such provision in the CMR.
 6. The CIM and SMGS do not provide for any arbitration in legal disputes arising from the contract of carriage, as does Article 33 CMR. An arbitration clause is mentioned in Article 28 of the main COTIF Convention, regarding disputes between the Member States and the Organisation or between the parties to the transport contract (§ 2).
 7. The CIM offers the possibility for relationships between carriers to be dealt with in terms of allocating compensation and the right of recourse. For CIT members, a self-contained regime is applicable, based on the waiver in Article 52 CIM and the CIT document entitled “Agreement concerning the Relationship between Carriers in respect of International Freight Traffic by Rail” (AIM). There is no such provision in CMR and SMGS.

VI. Procedural provisions

1. In the case of loss or damage of the goods or delay in delivery, all three Conventions foresee procedural provisions. Whereas the CMR establishes the need for written

Summary of the scope of Application of CMR Convention, COTIF CIM, SMGS Convention

Member States	CMR Convention 19 May 1956	COTIF/CIM UR 1 July 2006	SMGS 1 July 2015
Afghanistan			X
Albania	X	X	X
Algeria		X	
Armenia	X	X	
Austria	X	X	
Azerbaijan	X	X	X
Belarus	X		X
Belgium	X	X	
Bosnia Herzegovina	X	X	
Bulgaria	X	X	X
China			X
Croatia	X	X	
Cyprus	X		
Czech Republic	X	X	
Democratic People's Republic of Korea			X
Denmark	X	X	
Estonia	X	X	X
Finland	X	X	
France	X	X	
Georgia	X	X (Application on specific lines only)	X
Germany	X	X	
Greece	X	X	
Hungary	X	X	X
Iran (Islamic Republic of)	X	X	X
Iraq		X (membership suspended)	
Ireland	X	X	
Italy	X	X	
Jordan	X		
Kazakhstan	X		X

Kyrgyzstan	x			x
Latvia	x		x	x
Lebanon	x		x (membership suspended)	
Liechtenstein			x	
Lithuania	x		x	x
Luxembourg	x		x	
Macedonia, Former Yugoslav Republic	x		x	
Malta	x			
Monaco			x	
Mongolia	x			x
Montenegro	x		x	
Morocco	x		x	
Netherlands	x		x	
Norway	x		x	
Pakistan			x	
Poland	x		x	x
Portugal	x		x	
Republic of Moldova	x			x
Romania	x		x	
Russian Federation	x		x (Application on specific lines only)	x
Serbia	x		x	
Slovakia	x		x	x
Slovenia	x		x	
Socialist Republic of Vietnam				x
Spain	x		x	
Sweden	x		x	
Switzerland	x		x	
Syrian Arab Republic	x		x (membership suspended)	
Tajikistan	x			x
Tunisia	x		x	
Turkey	x		x	
Turkmenistan	x			x
Ukraine	x		x (Application on specific lines only)	x
United Kingdom of Great Britain and Northern Ireland	x		x	
Uzbekistan	x			x
European Union			x	
Total	55		50	25



Part II

Comparative Matrix

Comparative Matrix CMR Convention, COTIF/CIM, SMGS Convention, Documents IRU, CIT and OSJD

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/UR	DOCUMENTS CIT	SMGS	COMMENTS
Date	19 May 1956		9 May 1980 - 3 June 1999 (Protocol)		1 July 2015	
Mode	Road	Road	Rail	Rail	Rail	
Scope of application	<p>Art. 1.1 This Convention shall apply to every contract for the carriage of goods by road in vehicles¹ for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a Contracting country, irrespective of the place of residence and the nationality of the parties.</p> <p>Art. 1.3 This Convention shall apply also where carriage coming within its scope is carried out by States or by governmental institutions or organizations.</p> <p>Art. 1.4 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.</p>	<p>Art. 1 § 1 These Uniform Rules shall apply to every contract of carriage of goods by rail for reward when the place of taking over of the goods and the place designated for delivery are situated in two different Member States, irrespective of the place of business and the nationality of the parties to the contract of carriage.</p> <p>Art. 1 § 2 These Uniform Rules shall apply also to contracts of carriage of goods by rail for reward, when the place of taking over of the goods and the place designated for delivery are situated in two different States, of which at least one is a Member State and the parties to the contract agree that the contract is subject to these Uniform Rules.</p> <p>Art. 1 § 5 These Uniform Rules shall not apply to carriage performed between stations situated on the territory of neighbouring States, when the infrastructure of these stations is managed by one</p>	<p>Art. 3 Application of the Agreement § 1. This Agreement shall establish a common legal basis for contracts for the carriage of goods² in international through railway traffic and international through railway-ferry traffic. § 2. The carriage of goods in international through railway traffic shall take place between stations that are open for freight operations in accordance with the national law of the Parties³, and in international through railway-ferry traffic, including a waterway section of the route which the Parties have declared open for such carriage. § 3. If the Parties are at the same time parties to other international agreements establishing the legal norms for the contract of carriage of goods by rail, traffic between stations of the railways⁴ of these Parties may be performed under the terms of those agreements.</p>	<p>Article 3 Application of the Agreement § 1. This Agreement shall establish a common legal basis for contracts for the carriage of goods² in international through railway traffic and international through railway-ferry traffic. § 2. The carriage of goods in international through railway traffic shall take place between stations that are open for freight operations in accordance with the national law of the Parties³, and in international through railway-ferry traffic, including a waterway section of the route which the Parties have declared open for such carriage. § 3. If the Parties are at the same time parties to other international agreements establishing the legal norms for the contract of carriage of goods by rail, traffic between stations of the railways⁴ of these Parties may be performed under the terms of those agreements.</p>	<p>CMR is a single international Convention applying to every contract of carriage of goods by road. CIM are Uniform Rules to the Convention concerning International Carriage by Rail (COTIF) applying to every contract of carriage of goods by rail. SMGS is an Agreement on International Railway Freight Communications for the purposes of organising freight traffic via direct international railway communications. The COTIF/CIM and CMR shall apply to every contract of carriage of goods by rail (COTIF/CIM) or by road in vehicles (CMR) for reward when the place of taking over of the goods and the place designated for delivery are situated in two different countries, of which at least one is a Member State. If only one country is a Member State, the CIM Uniform Rules shall only apply if the parties to the contract agree that it shall be subject to the CIM Uniform Rules. In other words, the CMR is</p>	

¹ According to Art. 1.2. CMR "vehicles" means motor vehicles, articulated vehicles, trailers and semi-trailers as defined in article 4 of the Convention on Road Traffic dated 19 September 1949.

² According to Art. 2 SMGS "Goods" means commodities, products, wagons as transport means not belonging to the carrier and other physical objects accepted for carriage with the contract of carriage.

³ According to Art. 2 SMGS "Party" means a State which is a party to the Convention on International through Railway Traffic.

⁴ According to Art. 2 SMGS "Railway" means the infrastructure located in the territory of one State.

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
			<p>or more infrastructure managers subject to only one of those States.</p>			<p>applicable when the place of departure and the place of destination are situated in two different States, of which at least one is a Contracting State, irrespective of the place of residence or the nationality of the parties. In accordance with Article 1.3, the CMR is also applicable when the carrier is a person of public law (States or governmental institutions or organisations).</p> <p>CMR and CIM establish different exceptions to their scopes of application: CMR shall not apply to carriage performed under the terms of any international postal convention; to funeral consignments; and to furniture removal; CIM shall not apply when the infrastructure of stations in neighbouring states is managed by one or more infrastructure managers subject to only one of those States.</p> <p>SMGS stipulates that the whole Agreement applies subsidiary to other international agreements.</p> <p>Unlike CIM and CMR, SMGS applies only if the carriage of goods takes place between stations that are situated in two different Member States (both are Parties to the Agreement). CIM and CMR also apply if only one country is a Member State.</p> <p>SMGS, unlike CIM, stipulates that the carriage of goods</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
Member States, which are contracting parties to the Conventions	See Summary of the scope of Application of CMR Convention, COTIF CIM, SMGS Convention Art. 2.1 Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. Provided that to the extent it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by act or omission of the carrier by road, but by some event which could only have occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Convention but in the manner in which the liability	IRU General Conditions for the International Carriage of Goods by Road (revised on 3 November 2011, abbreviation IRU GCR) and IRU General Conditions for the International Carriage of Goods by Road and Logistic Services (revised on 3 November 2011, abbreviation IRU GCRLS). Clause 1.1 of GCR and GCRLS make reference to the Rotterdam Rules: contract for the international carriage of goods wholly or partly by sea.	See Summary of the scope of Application of CMR Convention, COTIF CIM, SMGS Convention Art. 1 § 3 When international carriage being the subject of a single contract includes carriage by road or inland waterway in internal traffic of a Member State as a supplement to transfrontier carriage by rail, these Uniform Rules shall apply. Art. 1 § 4 When international carriage being the subject of a single contract of carriage includes carriage by sea or transfrontier carriage by inland waterway as a supplement to carriage by rail, these Uniform Rules shall apply if the carriage by sea or inland waterway is performed on services included in the list of services provided for in Article 24 § 1 of the Convention.	GTC-CIM , Point 2.1: The GTC-CIM shall govern the legal relationship between the carrier and customer for consignments subject to the CIM Uniform Rules; they shall likewise apply to contracts of carriage where the scope of the CIM has been extended in accordance with Article 1 (e.g. carriage by road or inland waterway) of the CIM and in every case where the parties to the contract so agree; GTC-EurAsia : These General Terms and Conditions of Eurasian carriage of goods by rail (GTC EurAsia) govern through contracts for the international carriage of goods between Europe and Asia by rail, including rail – sea traffic. They shall be applicable if the parties to the contract so agree; GTC Rail-Sea : These general terms and conditions shall be applicable to the contract concluded between several carriers for the	See Summary of the scope of Application of CMR Convention, COTIF CIM, SMGS Convention Article 3 Application of the Agreement § 2. The carriage of goods in international through railway traffic shall take place between stations that are open for freight operations in accordance with the national law of the Parties, and in international through railway-ferry traffic, including a waterway section of the route which the Parties have declared open for such carriage.	takes place either without transhipment at border stations having the same rail gauge, or with transhipment, or with the transfer of wagons onto bogies of the required gauge at border stations where railways of different gauges meet, or with the use of adjustable-gauge bogies (Article 4 SMGS “Method of carriage”).
Application to other modes						Multimodal transport is dealt with differently in all three Conventions: <i>CIM</i> applies to road transport, where international carriage includes carriage by road in the internal traffic of a Member State as a supplement to trans-frontier carriage by rail (“rail+” approach). This means that the principal subject of a single contract of carriage has to be carriage by rail. <i>CMR</i> applies to combined transport when the road vehicle containing the goods is itself carried over part of the journey by another mode of transport (sea, inland waterways, air or rail) and goods are not unloaded from the vehicle (“mode-on-mode” approach). The application of the law of the other means of transport is only provided for under the <i>CMR</i> when three cumulative conditions are met: the damage is not caused by an

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
	of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Convention.			international carriage of goods by rail including a maritime section listed in the CIM list of maritime and inland waterway services. Boiler-plate contract for sub-contracting international freight traffic by rail in full train loads of combined traffic (Boiler-plate contract TC for sub-contracting combined traffic): The carrier shall entrust the performance of CIM movements of wagons loaded with UTI and/or road vehicles and/or empty wagons in full train loads of combined traffic between ... and ... to the substitute carrier with his agreement.		act or omission of the road carrier; the damage results from an event which could only have occurred during the carriage of the road vehicle by the other means of transport; and the event actually occurred by reason of carriage by this other means of transport. SMGS is only applicable to international through-railway-ferry traffic, where the parties to the Convention have declared the waterway sections to be open for such carriage. CIM has broader "rail+" approach applicable to international maritime and inland waterway services.
	According to Art 1: the contract between the sender and the carrier for the international carriage of goods by road for reward; own account is not subject to the Convention. According to Art. 4, the contract has a consensual nature: the absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract.	The CMR does not cover every aspect of contracts of carriage of goods by road and, for issues outside its scope, it refers back to the applicable national law. National legislations governing contracts of carriage by road also only stipulate certain provisions, leaving the parties some contractual leeway for the definition of certain aspects of their contracts that are not explicitly covered by the CMR, as long as they conform to the applicable national law. The purpose of the IRU General Conditions for the International Carriage of Goods by Road (including Logistics Services	Contract between the sender and the carrier for the international carriage of goods by rail for reward, Art. 1 § 2. Based on consent between the sender and the carrier. Art. 6 § 2: The contract of carriage must be confirmed by a consignment note which accords with a uniform model. However, the absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules. Art. 12 § 1: The consignment note shall	The Uniform Rules CIM are not settling all aspects of contracts of carriage of goods by rail and, for issues outside its scope refers back to applicable national law. The CIT therefore supports railways to implement international rail transport law and the CIT products help to harmonise international rail transport law. To achieve that, the CIT draws up and maintains boilerplate documents for international traffic by rail, standardises the contractual relationships between customers and carriers or also between carriers and carriers. The CIT	Article 7 Pre-contractual coordination of carriage Pre-contractual coordination of the carriage of goods shall take place pending the conclusion of a contract of carriage in the following manner: - between the consignor ⁵ and the contractual carrier – in accordance with national law; - between the contractual carrier and successive carriers ⁶ – in accordance with the procedure agreed by them. Article 14 Contract of carriage § 1. Under the contract of carriage, the carrier ⁷ shall	Regarding CIM, SMGS and CMR, the main principles of the contract are the same (contract between the consignor/sender and the carrier for the international carriage of goods) and the contract has a consensual nature. In addition, in SMGS, there are special conditions for pre-contractual relationships between the consignor and the contractual carrier based on national law, and between the contractual carrier and the successive carriers based on the General Provisions and special conditions agreed by them. Differently to COTIF/CIM and
Scope of contract						

⁵ According to Art.2 SMGS "Consignor" means a person who has presented the goods for carriage and is indicated in the consignment note as the consignor of the goods.

⁶ According to Art.2 SMGS "Successive carrier" means a carrier which, acceding to the contract of carriage (concluded by a contractual carrier), accepts the goods from the contractual carrier or other successive carrier for their further transportation.

⁷ According to Art. 2 SMGS Carrier means the contractual carrier and all successive carriers involved in the carriage of goods, including on a waterway section of route in international railway-ferry traffic.

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>and their related Outline Agreements), is therefore to provide international road carriers with a flexible, bespoke reference framework which they can use to deal with issues that are not mandatorily settled by the CMR or contract law.</p> <p>IRU GCR, clause 1.2: in accordance with the CMR Convention, the contract is of a consensual nature and the sender and the carrier shall refrain from contesting this nature. IRU General Conditions, sample estimate attached to these GC giving a clear list of agreed services to be paid for.</p> <p>User Guide for the IRU GCR and Related Outline Agreements.</p> <p>IRU General Conditions, protection of carriers' economic and financial interests, in particular by:</p> <ul style="list-style-type: none"> - including insurance issues, clause 5 and IRU Guidelines for transport operators on insurance matters dated 3 November 2011. - entitling carriers to additional payment through supplementary invoicing for performing any services not initially agreed, clause 14.2. - including a provision taking into account fuel cost alterations, clause 14.4. - foreseeing passing on road taxes and charges through appropriate invoicing to the 	<p>be prima facie evidence of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier.</p> <p>documents are either a recommendation and only bind members to the extent that they adopt it ("opting-in" principle) or they are mandatory and bind all members of the CIT and they have to declare that he will not apply a provision ("opting-out" principle).</p>	<p>undertake, for a fee, to carry the goods entrusted to it by the consignor to the destination station over the route agreed by the consignor and the contractual carrier and to deliver them to the consignee⁸.</p> <p>§ 2. The carrier shall perform the carriage of goods under the terms of this Agreement provided that:</p> <ol style="list-style-type: none"> 1) the carrier or consignor has at its disposal the means of transport necessary for such carriage; 2) the consignor complies with the terms of this Agreement; 3) carriage is not prevented by circumstances which the carrier cannot prevent and the elimination of which is beyond its control; 4) carriage is coordinated among carriers for the route taken by the goods. <p>§ 3. The conclusion of the contract of carriage shall be confirmed by a consignment note.</p> <p>§ 4. Incorrect or inaccurate information entered in the consignment note, as well as the loss of the consignment note by the carrier shall affect neither the existence nor the validity of the contract of carriage.</p> <p>§ 5. Each successive carrier, by taking over the goods for carriage, together with the consignment note, thereby</p>	<p>CMR, within the framework of SMGS, the successive carriage model is the only possible contractual model. There are no provisions regarding a substitute carrier.</p>		

⁸ According to Art.2 SMGS Consignee means a person who is indicated in the consignment note as the person receiving the goods.

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM UR	DOCUMENTS CIT	SMGS	COMMENTS
		<p>client: clause 14.5. - payment within 30 days from the invoice date, clause 14.6. - clearly distinguishing services ancillary to the contract of carriage, which form an integral part of the latter and are therefore subject to the CMR and legislation governing contracts of carriage, from additional services - in particular logistic services - subject to general contract law).</p>			<p>accedes to this contract of carriage and shall assume the obligations arising therefrom. § 6. Wagon for the carriage of goods shall be provided by the carrier or the consignor. Wagons admitted to circulation in international traffic shall be provided for the carriage of goods.</p>	
	<p>CMR consignment note Art. 4 The contract of carriage shall be confirmed by the making out of a consignment note. 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. Art. 6.1 The consignment note shall contain the following particulars: (a) The date of the consignment note and the place at which it is made out; (b) The name and address of the sender; (c) The name and address of the carrier; (d) The place and the date of taking over of the goods and the place designated for delivery; (e) The name and address of the consignee;</p>	<p>IRU Model CMR 2007 How to fill in the CMR consignment note (IRU model 2007) Outline Agreements, art.6: each transport operation shall be covered by a CMR consignment note drawn up by the carrier based on information provided by the sender according to Art.6 and 7 of the CMR Convention.</p>	<p>CIM UR consignment note Art. 6 § 2 The contract of carriage must be confirmed by a consignment note which accords with a uniform model. However, the absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules. Art. 7 § 1 The consignment note must contain the following particulars : a) the place at which and the day on which it is made out; b) the name and address of the consignor; c) the name and address of the carrier who has concluded the contract of carriage; d) the name and address of the person to whom the goods have effectively been handed over if he is not the carrier referred to in letter c);</p>	<p>GLV-CIM, Point 1: CIM Consignment Note (c. n.) Manual: instructions for the use of the CIM c. n. and other international freight documents (Common provisions for paper and electronic c. n., Paper c. n.: Specimen for CIM c.n in Appx 4a and for CIM c.n for combined transport in Appx 4b, Supplementary sheets for customers GLV-CIM/SMGS, Point 3: This manual contains a specimen of the CIM/SMGS c. n. and instructions for its use. It describes an alternative to the classic system of consignment with retrascripture of a SMGS c. n. to a CIM c. n. or from a CIM c. n. to a SMGS c. n. at the reassignment point. Point 4: Within the CIM area, the provisions of this manual are applicable if they have been agreed between the customer and carrier as well as between the carriers themselves. The use of a CIM/SMGS</p>	<p>CIM/SMGS consignment note Article 13 Carriage of goods with the CIM/SMGS Consignment Note The goods can be transported with the CIM/SMGS Consignment note. The sample consignment note and rules for its completion can be found in the CIM/SMGS Consignment Note Manual (See Annex 6 to this Agreement). Rules governing the carriage of goods, mentioned in Article 8 "Rules governing the carriage of goods" of this Agreement shall apply to any other area, which is not governed by the CIM/SMGS Consignment Note Manual. Article 15 Consignment Note § 1. The consignment note must contain the following information: 1) name and postal address of the consignor; 2) name and postal address</p>	<p>Documentary requirements in CMR, CIM and SMGS are the same: there must be a consignment note/electronic consignment note (although the particular details required by each convention are different). According to paragraphs 1 and 2 of Article 6 CMR, Article 7 § 1 CIM and Article 15 § 1 SMGS, the consignment note must contain these particulars – that is to say, the parties must include these particulars in the consignment note. The fact that one party has not complied with this obligation does not, according to Article 4 CMR/ Article 6 § 2 CIM, affect either the existence or the validity of the contract of carriage or the application of the CMR/CIM. The consignment note is evidence of a contract but not <i>condicio sine qua non</i> for the contract of carriage. Under SMGS, an additional common CIM/SMGS consignment note in respect</p>
Documentary requirements						
Consignment note						

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>(f) The description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognized description;</p> <p>(g) The number of packages and their special marks and numbers;</p> <p>(h) The gross weight of the goods or their quantity otherwise expressed;</p> <p>(i) Charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);</p> <p>(j) The requisite instructions for Customs and other formalities;</p> <p>(k) A statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention.</p> <p>Art.6.2 Where applicable, the consignment note shall also contain the following particulars:</p> <p>(a) A statement that transshipment is not allowed;</p> <p>(b) The charges which the sender undertakes to pay;</p> <p>(c) The amount of "cash on delivery" charges;</p> <p>(d) A declaration of the value of the goods and the amount representing special interest in delivery;</p> <p>(e) The sender's instructions to the carrier regarding insurance of the goods;</p>		<p>e) the place and the day of taking over of the goods;</p> <p>f) the place of delivery;</p> <p>g) the name and address of the consignee;</p> <p>h) the description of the nature of the goods and the method of packing, and, in case of dangerous goods, the description provided for in the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID);</p> <p>i) the number of packages and the special marks and numbers necessary for the identification of consignments in less than full wagon loads;</p> <p>j) the number of the wagon in the case of carriage of full wagon loads;</p> <p>k) the number of the railway vehicle running on its own wheels, if it is handed over for carriage as goods;</p> <p>l) in addition, in the case of intermodal transport units, the category, the number or other characteristics necessary for their identification;</p> <p>m) the gross mass or the quantity of the goods expressed in other ways;</p> <p>n) a detailed list of the documents which are required by customs or other administrative authorities and are attached to the consignment note or held at the disposal of the carrier at the offices of a duly designated authority or a body designated in the contract;</p> <p>o) the costs relating to</p>	<p>consignment note is presumed. In the SMGS area, the provisions of this manual only apply to those traffic axes specified by the SMGS participants which apply this manual.</p> <p>GR CIM/SMGS, Point 1: This document contains the special provisions for traffic between states applying the CIM Uniform Rules and those applying the SMGS when assignments are reconfirmed en route using a new consignment note.</p>	<p>of the consignee;</p> <p>3) name of the contractual carrier;</p> <p>4) name of the railway and station of departure;</p> <p>5) name of the railway and station of destination;</p> <p>6) names of the border stations;</p> <p>7) designation of the goods and their code;</p> <p>8) consignment number;</p> <p>9) type of packaging;</p> <p>10) number of packages;</p> <p>11) mass of the goods;</p> <p>12) wagon (container) number, who assigned the wagon for the carriage of goods (the consignor or the carrier);</p> <p>13) a list of accompanying documents enclosed by the consignor to the consignment note;</p> <p>14) information on payment of carriage charges;</p> <p>15) number of seals and their signs;</p> <p>16) method for determination of the mass of goods;</p> <p>17) date of the contract of carriage.</p> <p>§ 2. The consignment note shall, where appropriate, contain the following particulars in addition to the information listed in §1 of this Article:</p> <p>1) the names of successive carriers;</p> <p>2) the consignor's declarations concerning the goods;</p> <p>3) the port railway stations and the ports for the transfer to transport by water;</p>	<p>of Annex 6 is used to execute contracts of carriage. Blank forms for the consignment note are printed and filled in using one or two of the working languages (Chinese, Russian).</p> <p>CIM does not directly establish a mandatory format for the consignment note, nor does it establish the languages to be used for their completion; it gives international carriers' associations the right to establish uniform model of the consignment notes, with the consent of international clients' associations.</p> <p>CMR does not establish a mandatory format or language for consignment notes.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>(f) The agreed time limit within which the carriage is to be carried out; (g) A list of the documents handed to the carrier.</p> <p>Art.9 1. The consignment note shall be prima facie evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier. 2. If the consignment note contains no specific reservations by the carrier, it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note.</p>		<p>carriage (the carriage charge, incidental costs, customs duties and other costs incurred from the conclusion of the contract until delivery) in so far as they must be paid by the consignee or any other statement that the costs are payable by the consignee; p) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules. Art. 7 § 2 Where applicable the consignment note must also contain the following particulars: a) in the case of carriage by successive carriers, the carrier who must deliver the goods when he has consented to this entry in the consignment note; b) the costs which the consignor undertakes to pay; c) the amount of the cash on delivery charge; d) the declaration of the value of the goods and the amount representing the special interest in delivery; e) the agreed transit period; f) the agreed route; g) a list of the documents not mentioned in § 1, letter n) handed over to the carrier; h) the entries made by the consignor concerning the number and description of seals he has affixed to the wagon. Art. 12 § 1 The consignment note shall</p>		<p>4) other particulars provided for in the Rules for the Carriage of Goods. § 3. Consignment note blank forms shall be printed and completed in one of the official languages of the OSJD (Chinese, Russian) - in Russian, when carrying goods from/to Republic of Azerbaijan, Republic of Belarus, Republic of Bulgaria, Hungary, Georgia, Islamic Republic of Iran, Republic of Kazakhstan, Kyrgyz Republic, Republic of Latvia, Republic of Lithuania, Republic of Moldova, Mongolia, Republic of Poland, Russian Federation, Slovakian Republic, Republic of Tajikistan, Turkmenistan, Republic of Uzbekistan, Ukraine, Republic of Estonia or in transit via these countries; - in Chinese, when carrying goods from Socialist Republic of Vietnam, People's Republic of China and Democratic People's Republic of Korea; - in Russian, when carrying goods to Socialist Republic of Vietnam, People's Republic of China and Democratic People's Republic of Korea or in transit via these countries Consignment note blank forms, as well as the entries in all or some fields of the consignment note, may contain translation into another language. By agreement between participants in the carriage,</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
			<p>be prima facie evidence of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier. Art. 6 § 8 The international associations of carriers shall establish uniform model consignment notes in agreement with the customers' international associations and the bodies having competence for customs matters in the Member States as well as any intergovernmental regional economic integration organisation having competence to adopt its own customs legislation.</p>		<p>the consignment note may be completed in any other language. § 4. The consignment note may be completed as an electronic consignment note. The electronic consignment note shall function in the same way as a paper consignment note and shall represent the same set of data in electronic form as a paper consignment note.</p>	
Electronic consignment note	<p>Additional Protocol to the CMR Convention concerning the Electronic Consignment Note concluded in Geneva on 20 February 2008 and entered into force on 5 June 2011.</p>	<p>Standard model clause and IRU GCR, clause 3 use of electronic consignment notes: 3.2 the electronic consignment note has the same legal and commercial value, including the evidentiary value, and has the same effects as if it were in paper form. IRU Position on the introduction of the electronic CMR Consignment Note dated 26 April 2012: Draft model letter for the promotion of the Additional Protocol. Draft structure of the "Standard Contract to be concluded between parties willing to use the e-CMR" and its User Guide.</p>	<p>Art. 6 § 9 The consignment note and its duplicate may be established in the form of electronic data registration which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data.</p>	<p>Electronic c. n.; Principles set down in CIM Article 6 § 9, Contract for the electronic exchange of c. n. data (EDI contract), Printouts and Explanatory notes on the content of the c. n.).</p>	<p>Art. 15 § 4. The consignment note may be completed as an electronic consignment note. The electronic consignment note shall function in the same way as a paper consignment note and shall represent the same set of data in electronic form as a paper consignment note.</p>	<p>The use of the electronic consignment note under CMR, CIM and SMGS is based on the same principle that the electronic consignment note is <u>functional equivalent</u> to the paper version.</p>
Responsibilities/ obligations of the sender/consignor	<p>Art.7.1 The sender shall be responsible for all expenses, loss and damage sustained by the carrier by reason of</p>	<p>IRU GCR, clause 4 declaration obligations of the carrier and sender and electronic data transmission and IRU GCRLS, clause 3</p>	<p>Art.9 If the consignor has failed to make the entries prescribed by RID, the carrier may at any time</p>	<p>GTC-CIM, Point 6.4: The consignor shall seal covered wagons to the extent that national law provides for it or that it has been agreed</p>	<p>Article 16 Responsibility for particulars entered in the consignment note § 1. The consignor shall</p>	<p>The principles with respect to the responsibilities/obligations of the sender/consignor are the same. The</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
<p>the inadequacy or inadequacy of:</p> <p>(a) The particulars specified in article 6, paragraph 1, (b), (d), (e), (f), (g), (h) and (j);</p> <p>(b) The particulars specified in article 6, paragraph 2;</p> <p>(c) Any other particulars or instructions given by him to enable the consignment note to be made out or for the purpose of their being entered therein.</p> <p>Art.10</p> <p>The sender shall be liable to the carrier for damage to persons, equipment or other goods, and for any expenses due to defective packing of the goods, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it. Art. 11: Making available any documents required for Customs;</p> <p>Art.11</p> <p>1. For the purposes of the Customs or other formalities which have to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish him with all the information which he requires.</p> <p>2. The carrier shall not be under any duty to inquire into either the accuracy or the adequacy of such documents and information.</p>	<p>declaration obligations of the provider/carrier and client/sender and electronic data transmission: any data pertaining to security or safety.</p> <p>IRU GCR, clause 4.5 and IRU GCRLS, clause 3.5 specifying that the sender/client is liable for any consequences resulting from the handing over to the carrier/provider of goods which prove falsified or counterfeit.</p>	<p>unload or destroy the goods or render them innocuous, as the circumstances may require, without payment of compensation, save when he was aware of their dangerous nature on taking them over.</p> <p>Art. 13 § 1</p> <p>The consignor and the carrier shall agree who is responsible for the loading and unloading of the goods. In the absence of such an agreement, for packages the loading and unloading shall be the responsibility of the carrier whereas for full wagon loads loading shall be the responsibility of the consignor and unloading, after delivery, the responsibility of the consignee.</p> <p>Art. 14</p> <p>The consignor shall be liable to the carrier for any loss or damage and costs due to the absence of, or defects in, the packing of goods, unless the defectiveness was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.</p> <p>Art. 15 § 1</p> <p>With a view to the completion of the formalities required by customs and other administrative authorities, to be completed before delivery of the goods, the</p>	<p>between him and the carrier. The consignor shall seal large containers, swap bodies, semi-trailers and other closed intermodal transport units used for combined transport and presented for carriage loaded. The consignor and carrier may agree that sealing of specific traffics is not required;</p> <p>Point 7: Where the goods require packaging because of their nature or condition, the consignor must pack them.</p>	<p>ensure the correctness of the particulars and statements it enters in the consignment note. It shall bear responsibility for all the consequences in the event of those particulars and statements being incorrect, inaccurate or incomplete, or made elsewhere than in the allotted field of the consignment note. If, in accordance with the provisions of this Agreement, the carrier enters the consignor's statements in the consignment note, it shall be deemed to have done so on behalf of the consignor unless the contrary is proved.</p> <p>§ 3. The consignor shall pay the carrier a penalty⁹ if, after a contract of carriage has been concluded, the carrier finds particulars and statements furnished by the consignor in the consignment note to be incorrect, inaccurate or incomplete and, at the same time, establishes that:</p> <p>1) the goods include articles that are not allowed to pass through the State border in at least one of the States on whose territory they would have to be carried;</p> <p>2) dangerous goods have been accepted for carriage in violation of their conditions of carriage.</p>	<p>sender's/consignor's or consignee's right to dispose of the goods is different:</p> <p>According to CMR, from the moment the consignment note is made out, the consignee is only entitled to amend the contract of carriage if the sender has added a statement to that effect on the consignment note (Article 12.3 CMR).</p> <p>According to CIM, however, the consignee has the right to amend the contract of carriage unless the consignor has included an indication to the contrary (Article 18 § 3 with Article 18 § 2 lit. d).</p> <p>According to SMGS the consignor's right to amend the contract of carriage shall cease when the consignment note is delivered to the consignee or the goods have arrived at the border station of entry into the country of destination, if the carrier already has a written declaration by the consignee concerning amendment of the contract of carriage (Article 25 § 5).</p>	

⁹ According to Art.2 SMGS "Penalty (fine)" means a fixed sum of money or a sum of money expressed as a percentage of the amount of obligation which one party to a contract of carriage has to pay to the other party in the event of failure to fulfil obligations under the contract of carriage.

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier.</p> <p>Art.22.1 When the sender hands goods of a dangerous nature to the carrier, he shall inform the carrier of the exact nature of the danger and indicate if necessary, precautions to be taken. If this information has not been entered in the consignment note, the burden of proving, by some other means, that the carrier knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the sender or the consignee.</p> <p>Art.12.1 The sender has the right to dispose of the goods, in particular by asking the carrier to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note.</p> <p>Art. 12.3 The consignee shall, however, have the right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.</p>		<p>consignor must attach the necessary documents to the consignment note or make them available to the carrier and furnish him with all the requisite information.</p> <p>Art. 18 § 1 The consignor shall be entitled to dispose of the goods and to modify the contract of carriage by giving subsequent orders. He may in particular ask the carrier</p> <p>a) to discontinue the carriage of the goods;</p> <p>b) to delay the delivery of the goods;</p> <p>c) to deliver the goods to a consignee different from the one entered on the consignment note;</p> <p>d) to deliver the goods at a place other than the place of destination entered on the consignment note.</p>		<p>3) in the process of loading by the consignor, overloading of the wagon (container) beyond its carrying capacity has been allowed;</p> <p>4) the amount of carriage charges has been underestimated;</p> <p>5) circumstances jeopardizing the safety of traffic have arisen.</p> <p>A penalty provided for in subparagraphs 1, 2, 4 or 5 of this paragraph shall be imposed in accordance with the provisions of Article 31</p> <p>'Payment of carriage charges and penalties' in an amount equal to five times the fare payable to the carrier who ascertained such an infringement.</p> <p>The penalty relating to subparagraph 3 of this paragraph shall be imposed in accordance with the provisions of Article 31</p> <p>'Payment of carriage charges and penalties' in the amount of five times the fare for the carriage of the excess mass of goods due to the carrier who detected the excess.</p> <p>The carrier shall be entitled to impose the penalties provided for in this paragraph, regardless of indemnification for possible damages and other penalties to be paid by the consignor or consignee in accordance with the terms of this Agreement.</p> <p>Article 18 Unit containers, packaging and marking</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>§ 2. The consignor shall ensure the correctness of markings, labels or tags applied or attached to cargo packages, as well as of labels affixed by the consignor to wagons, ITU¹⁰s and road vehicles¹¹.</p> <p>Article 19 Loading and determination of the mass of the cargo</p> <p>§ 2. The national law of the country of departure shall determine who is to load the goods onto the wagon: the carrier or the consignor.</p> <p><u>The loading of goods onto ITUs and road vehicles shall be carried out by the consignor.</u></p> <p>§ 4. If the consignment note contains no information as to who loaded the goods, they shall be deemed to have been loaded by the consignor.</p> <p>Article 22 Completion of administrative formalities</p> <p>§ 1. The consignor shall attach to the consignment note the accompanying documents necessary for the completion of customs and other administrative formalities over the entire route. These documents shall refer only to those goods which appear in the consignment note in question.</p> <p>If the consignor does not attach to the consignment note a document that is</p>	

¹⁰ According to Art.2 SMGS "intermodal transport unit (ITU)" means container, swap body or semi-trailer intended for the carriage of goods by two or more modes of transport without transshipment of the goods during the change of transport mode.

¹¹ According to Art.2 SMGS "Road vehicle" means a laden motor vehicle, road train or trailer or an empty? motor vehicle, road train or trailer, before or after use for the carriage of goods by rail.

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>necessary for the completion of administrative formalities and send it to the relevant administrative inspection body, it shall include information about this in the consignment note.</p> <p>§ 3. The consignor shall be liable to the carrier for consequences resulting from the absence, insufficiency or incorrectness of the accompanying documents.</p> <p>§ 4. Accompanying documents which the consignor has attached to the consignment note shall be listed by the consignor in the consignment note.</p> <p>If the consignor has not complied with the provisions of this paragraph, the contractual carrier shall refuse to accept the goods for carriage.</p> <p>5. If the carriage or delivery of the goods is delayed because the consignor has not submitted the necessary accompanying documents or the documents it has submitted and listed in the consignment note are inadequate or incorrect, the carrier shall be paid the resulting additional carriage charges and costs as well as the penalties provided for by national law as laid down in Article 31 'Payment of carriage charges and penalties' of this Agreement.</p> <p>Article 23 Verification of goods</p> <p>§ 2. If the consignor has not</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM UR	DOCUMENTS CIT	SMGS	COMMENTS
<p>Obligations of the carrier¹²</p>	<p>Art.8.1 On taking over the goods, the carrier shall check: (a) The accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and</p>	<p>Standard reservations in the form of a CMR Driver Checklist in 10 languages. IRU GCR, clause 7 carrier's reservations or refusal to take over the goods and IRU GCR/LS, clause 6 provider/carrier's reservations or refusal to</p>	<p>Art. 11 §1 The carrier shall have the right to examine at any time whether the conditions of carriage have been complied with and whether the consignment corresponds with the entries in the consignment note made by</p>	<p>GTC-CIM, Point 6.1: Except if otherwise agreed, the consignor shall be responsible for loading; GLV-CIM: Appendix 8: In the case of circumstances preventing carriage in the sense of CIM Article 20, of his own accord the carrier is</p>	<p>complied with the conditions of carriage or the consignment does not match the information supplied by the consignor in the consignment note, the carrier shall, in the manner provided for in Article 31 'Payment of carriage charges and penalties' and in Article 32 'Additional costs associated with the carriage of goods' of this Agreement, be compensated for all costs resulting from the verification and substantiated by supporting documents. Article 25 § 5 Amendments of the contract of carriage contract of carriage § 5. The consignor's right to amend the contract of carriage shall cease when the consignment note is delivered to the consignee or the goods have arrived at the border station of entry into the country of destination, if the carrier already has a written declaration by the consignee concerning amendment of the contract of carriage.</p>	<p>Differences regarding carriers' obligations: CMR: The sender is entitled to require the carrier to check the contents of the packages (Article 8.3). Where the carrier has no reasonable means to check, he must</p>

¹² According to Art. 3 lit. a) CIM "carrier" means the contractual carrier with whom the consignor has concluded the contract of carriage pursuant to these Uniform Rules, or a successive carrier who is liable on the basis of this contract.

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	<p>(b) The apparent condition of the goods and their packaging. Art.8.2 Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based. He shall likewise specify the grounds for any reservations which he makes with regard to the apparent condition of the goods and their packaging. Such reservations shall not bind the sender unless he has expressly agreed to be bound by them in the consignment note. Art. 8.3 The sender shall be entitled to require the carrier to check the gross weight of the goods or their quantity otherwise expressed. He may also require the contents of the packages to be checked. The carrier shall be entitled to claim the cost of such checking. The result of the checks shall be entered in the consignment note. Art.11 2. The carrier shall not be under any duty to inquire into either the accuracy or the adequacy of such documents and information. The sender shall be liable to the carrier for any damage caused by the absence,</p>	<p>take over the goods for purposes of performing logistic services. IRU GCR, clause 13 specific rules for the carriage of dangerous goods and IRU GCRLS, clause 10 specific rules applicable to dangerous goods.</p>	<p>the consignor. If the examination concerns the contents of the consignment, this shall be carried out as far as possible in the presence of the person entitled; where this is not possible, the carrier shall require the presence of two independent witnesses, unless the laws and prescriptions of the State where the examination takes place provide otherwise. Art. 13 § 1 The consignor and the carrier shall agree who is responsible for the loading and unloading of the goods. In the absence of such an agreement, for packages the loading and unloading shall be the responsibility of the carrier whereas for full wagon loads loading shall be the responsibility of the consignor and unloading, after delivery, the responsibility of the consignee Art. 17 § 1 The carrier must hand over the consignment note and deliver the goods to the consignee at the place designated for delivery against receipt and payment of the amounts due according to the contract of carriage. Art. 20 § 1 When circumstances prevent the carriage of goods, the carrier shall decide whether it is preferable to carry the</p>	<p>to take action to alleviate the circumstances or shall ask for instructions from the person entitled; GLV-CIM: Appendix 9: in the case of circumstances preventing delivery in the sense of CIM Article 21, the carrier is to ask for instructions from the consignor, unless an endorsement on the consignment note requires the goods to be returned without further formality.</p>	<p>consignor and the contractual carrier and to deliver them to the consignee. Article 18 Unit containers, packaging and marking § 3. If shortcomings are detected during external inspection of unit containers (packaging) of goods presented for carriage, raising concerns about the impossibility of trans-shipment, total or partial loss of, or damage to (spoilage of) goods and transport vehicles, the carrier shall refuse to accept the goods for carriage or shall accept them for carriage subject to special contractual conditions. (...) Article 19 Loading of goods and determination of their mass § 2. The national law of the country of departure shall determine who is to load the goods onto the wagon: the carrier or the consignor. Article 21 Acceptance of goods for carriage Goods shall be accepted for carriage by the contractual carrier. Article 22 Completion of administrative formalities § 2. The carrier shall not be obliged to check whether the accompanying documents attached by the consignor to the consignment note are</p>	<p>protect himself by noting reservations on the consignment note. He should also note anything which is apparently suspect about the goods. If the carrier fails to make such reservations, it will be presumed, unless the contrary is actually proved, that the number of packages was accurately stated and that the goods appeared to be in good condition. CIM: No obligation to check the content of the goods. SMGS: No obligation to check the content of the goods. Whereas the CIM stipulates that the consignor and the carrier agree to who is responsible for the loading and unloading of goods, the SMGS stipulates that the national law of the country of departure determines whether the carrier or the consignor is obliged to load the goods onto the wagon. As the CMR does not stipulate responsibility for loading and unloading, this is governed by national law. IRU General Conditions specify that if the loading and unloading operations are to be performed by the carrier, they must be included in the price estimate or explicitly agreed to subsequently and appropriately paid for (clause 1.3 and section 10. Packing, handling, loading, stowage, unloading).</p>

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	<p>inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier. 3. The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.</p> <p>Art.14 1. If for any reason it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for delivery, the carrier shall ask for instructions from the person entitled to dispose of the goods in accordance with the provisions of article 12. 2. Nevertheless, if circumstances are such as to allow the carriage to be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in reasonable time from the person entitled to dispose of the goods in accordance with the provisions of article 12, he shall take such steps as</p>		<p>goods as a matter of course by modifying the route or whether it is advisable, in the interest of the person entitled, to ask him for instructions while giving him any relevant information available to the carrier.</p>		<p>correct and sufficient. § 4. Accompanying documents which the consignor has attached to the consignment note shall be listed by the consignor in the consignment note. If the consignor has not complied with the provisions of this paragraph, the contractual carrier shall refuse to accept the goods for carriage. § 6. Opening a wagon, ITU or road vehicle for border, customs, sanitary, veterinary, phytosanitary and other controls shall be recorded by the carrier by means of a report of opening.</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/UR	DOCUMENTS CIT	SMGS	COMMENTS
<p>seem to him to be in the best interests of the person entitled to dispose of the goods. Art.22.2</p> <p>Goods of a dangerous nature which, in the circumstance referred to in paragraph 1 of this article, the carrier did not know were dangerous, may, at any time or place, be unloaded, destroyed or rendered harmless by the carrier without compensation; further, the sender shall be liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.</p> <p>Art.13.1</p> <p>After arrival of the goods at the place designated for delivery, the consignee shall be entitled to require the carrier to deliver to him, against a receipt, the second copy of the consignment note and the goods. If the loss of the goods is established or if the goods have not arrived after the expiry of the period provided for in article 19, the consignee shall be entitled to enforce in his own name against the carrier any rights arising from the contract of carriage.</p> <p>Art.15.1</p> <p>Where circumstances prevent delivery of the goods after their arrival at the place designated for delivery, the carrier shall ask the sender for his instructions. If the consignee refuses the goods</p> <p>Delivery</p>	<p>IRU GCR, clause 6 takeover and delivery and IRU GCRLS, clause 5 takeover, movement and delivery of the goods in the framework of logistic services.</p> <p>IRU GCR, clause 9 sender's rights (over the goods) during carriage and IRU GCRLS, clause 8 client/sender's right over the goods during performance of logistic services: cf. to Art.15.1, 16.2 and 16.3.</p>	<p>Art.17 §1</p> <p>The carrier must hand over the consignment note and deliver the goods to the consignee at the place designated for delivery against receipt and payment of the amounts due according to the contract of carriage.</p> <p>Art.21 §1</p> <p>When circumstances prevent delivery, the carrier must without delay inform the consignee and ask him for instructions, save where the consignee has requested, by an entry in the consignment note, that the goods be returned to him as a matter of course in the event of circumstances preventing delivery.</p> <p>Art.22</p> <p>§ 1. The carrier shall be entitled to recover the costs occasioned by</p> <p>a) his request for instructions,</p>	<p>GTC-CIM, Point 11.1:</p> <p>Agreements made between the consignor and the carrier who accepts the goods for carriage under the contract of carriage shall determine acceptance of the goods for carriage, the servicing of the terminal, of the loading point, or of the private siding at the forwarding point. By default, acceptance shall take place in accordance with the provisions in force at the forwarding point;</p> <p>Point 11.2: Agreements made between the consignee and the carrier who delivers the goods under the contract of carriage shall determine delivery of the goods, the servicing of the terminal, of the unloading point, or of the private siding at the destination point. By default, delivery shall take place in accordance with the</p>	<p>Art.26</p> <p>Delivery of goods</p> <p>§ 1. On arrival of the goods at the destination station, the carrier shall deliver the consignment note and the goods to the consignee and the consignee shall accept the goods and the consignment note.</p> <p>§ 2. The consignee may refuse to accept the goods only in cases where, through the fault of the carrier, the quality of the goods has changed so much that they can no longer be used, either in part or in whole, for the original purpose.</p> <p>§ 3. The consignee note delivered after the consignee has paid all carriage charges payable to the carrier, save where otherwise stipulated in the agreement between them. The consignee shall be obliged to pay the carriage</p>	<p>All three Conventions have similar principles for the delivery of the goods and the rights of the carrier, when circumstances prevent delivery:</p> <p>Pursuant to Article 22 § 6 CIM, the carrier may return the goods to the consignor or even destroy them if the consignor fails to give instructions where to deliver the goods. Under SMGS, the carrier has a general right to dispose of the goods.</p> <p>In CMR, pursuant to Article 16, the carrier may immediately unload the goods and thereupon the carriage shall be deemed to be at an end. After that, the carrier can then hold the goods (16.2), entrust them to a third party (16.2.) or sell them (16.3.). Under CIM the carrier may proceed to sell the goods, without awaiting</p>	

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	<p>the sender shall be entitled to dispose of them without being obliged to produce the first copy of the consignment note. Art. 16</p> <p>1. The carrier shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions, unless such expenses were caused by the wrongful act or neglect of the carrier.</p> <p>2. In the cases referred to in article 14, paragraph 1, and in article 15, the carrier may immediately unload the goods for account of the person entitled to dispose of them and thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person so entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the consignment note and all other expenses shall remain chargeable against the goods.</p> <p>3. The carrier may sell the goods, without awaiting instructions from the person entitled to dispose of them, if the goods are perishable or their condition warrants such a course, or when the storage expenses would be out of proportion to the value of the goods. He may</p>		<p>b) the carrying out of instructions received,</p> <p>c) the fact that instructions requested do not reach him or do not reach him in time,</p> <p>d) the fact that he has taken a decision in accordance with Article 20 § 1, without having asked for instructions, unless such costs were caused by his fault. The carrier may in particular recover the carriage charge applicable to the route followed and shall be allowed the transit periods applicable to such route.</p> <p>§ 2. In the cases referred to in Article 20 § 2 and Article 21 § 1 the carrier may immediately unload the goods at the cost of the person entitled. Thereupon the carriage shall be deemed to be at an end. The carrier shall then be in charge of the goods on behalf of the person entitled. He may, however, entrust them to a third party, and shall then be responsible only for the exercise of reasonable care in the choice of such third party. The charges due under the contract of carriage and all other costs shall remain chargeable against the goods.</p> <p>§ 3. The carrier may proceed to the sale of the goods, without awaiting instructions from the person entitled, if this is justified by the perishable nature or the condition of the goods or if the costs of storage would</p>	<p>provisions in force at the delivery point; GTM-CIT: Working sheet 09-01: Delivery: Processing of the consignment note and accompanying documents; 09-02: Making the goods available.</p>	<p>charges for all of the goods specified in the consignment note even if part of the goods specified in the consignment note is missing.</p> <p>§ 4. Where the consignment is unloaded by the consignee, the carrier shall take part in verification of the number of packages or the condition or mass of the goods if:</p> <p>1) the goods have arrived at the destination station showing signs that access may have been gained to the goods in a wagon, ITU or road vehicle with intact seals of the consignor, bearing markings corresponding to those indicated in the consignment note;</p> <p>2) the goods have arrived at the destination station in a wagon, ITU or road vehicle with lost seals, damaged seals or seals bearing markings not corresponding to those indicated in the consignment note; the carrier shall, however, be entitled to refuse to take part in verifying the goods if even one undamaged seal of the consignor, preventing access to the goods and bearing markings corresponding to those shown in the consignment note, is still in place;</p> <p>3) goods transported in open rolling stock show signs of shortage, damage or spoilage which can be determined by external visual inspection;</p>	<p>instructions from the person entitled, if this is justified by the perishable nature or the condition of the goods, or if the costs of storage would be out of proportion to the value of the goods. In other cases, he may also proceed to sell the goods if, within a reasonable time, he has not received instruction from the person entitled.</p> <p>Under SMGS there are similar provisions.</p>

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	<p>also proceed to the sale of the goods in other cases if after the expiry of a reasonable period he has not received from the person entitled to dispose of the goods instructions to the contrary which he may reasonably be required to carry out.</p> <p>4. If the goods have been sold pursuant to this article, the proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the person entitled to dispose of the goods. If these charges exceed the proceeds of sale, the carrier shall be entitled to the difference.</p> <p>5. The procedure in the case of sale shall be determined by the law or custom of the place where the goods are situated.</p>		<p>be out of proportion to the value of the goods. In other cases he may also proceed to the sale of the goods if within a reasonable time he has not received from the person entitled instructions to the contrary which he may reasonably be required to carry out.</p> <p>§ 4. If the goods have been sold, the proceeds of sale, after deduction of the costs chargeable against the goods, must be placed at the disposal of the person entitled. If the proceeds of sale are less than those costs, the consignor must pay the difference.</p> <p>§ 5. The procedure in the case of sale shall be determined by the laws and prescriptions in force at, or by the custom of, the place where the goods are situated.</p> <p>§ 6. If the consignor, in the case of circumstances preventing carriage or delivery, fails to give instructions within a reasonable time and if the circumstances preventing carriage or delivery cannot be eliminated in accordance with §§ 2 and 3, the carrier may return the goods to the consignor or, if it is justified, destroy them, at the cost of the consignor.</p>		<p>4) perishable goods have arrived upon expiry of the delivery period; 5) the carrier has not adhered to the temperature regime for carriage in the refrigerated wagons it operates; 6) the goods were loaded by the carrier.</p> <p>Art. 28 Obstructions to carriage and delivery of goods</p> <p>§ 1. If, for reasons beyond the carrier's control, an obstruction to the carriage of goods arises, the carrier shall decide whether to obtain instructions from the consignor or to transport the consignment to the destination station with modification of the original route.</p> <p>§ 2. If the carrier, for reasons beyond its control, cannot transport the goods with modification of the original route, continue carriage, or deliver the goods to the consignee, the carrier shall immediately ask for instructions from the consignor.</p> <p>§ 3. If, within eight days after the application to the consignor, or within three days in the case of perishable goods and within two days in the case of animals, the consignor fails to give instructions as to what to do with the goods or gives instructions which cannot be carried out, the carrier shall have the right to dispose of the goods.</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
<p>Presumption of liability of the carrier</p>	<p>Art.17.1 (Strict liability) 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. Art.3 For the purposes of this Convention the carrier shall be responsible for the acts and omissions of his agents and servants and of any other persons of whose services he makes use for</p>	<p>IRU GCRLS, clause 14 provider's liability: 14.1 the provider shall be bound to best efforts obligation to provide the agreed logistic services, from takeover to delivery of the goods. So he shall only be liable for his proved wrongful act or neglect.</p>	<p>Art. 23 § 1 (Strict liability) The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, the goods between the time of taking over of the goods and the time of delivery and for the loss or damage resulting from the transit period being exceeded, whatever the railway infrastructure used. Art. 24 § 1 (Presumed liability) In case of carriage of railway vehicles running on their own wheels and consigned</p>		<p>§ 4. The carrier shall have the right to dispose of the goods without observing the deadlines set forth in § 3 of this Article if the condition of the goods calls for urgent action. § 5. If the consignor has given instructions in the consignment note as to what to do with the goods in the event of impediments to carriage and delivery of the goods, the carrier shall act accordingly. If the carrier decides that such instructions cannot be carried out, the provisions of § 1-3 of this Article shall apply. § 6. If obstructions to the carriage and delivery of goods arise for reasons beyond the carrier's control, the carrier shall be paid the additional carriage charges and costs it has incurred in connection with the obstruction, as well as penalties where these are provided for by national law.</p>	
					<p>Article 37 Liability of the carrier § 1. A carrier shall bear liability in respect of the consignor or the consignee, arising solely from the contract of carriage, in the manner and within the limits prescribed by this Agreement. § 2. The carrier shall be liable for loss or shortage of, or damage to (spoilage of), goods between the time of their acceptance for carriage and the time of their delivery. The</p>	<p>Obligation of result: strict liability of the carrier in CMR, CIM and SMGS. Differences regarding the presumption of liability of the carrier: In Article 24 CIM there are railway-specific provisions on liability for fault in case of carriage of railway vehicles as goods: while under CMR there is none.</p>

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	<p>the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.</p> <p>Art.11.3 The liability of the carrier for the consequences arising from the loss or incorrect use of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods. Art.12.7 A carrier who has not carried out the instructions given under the conditions provided for in this article or who has carried them out without requiring the first copy of the consignment note to be produced, shall be liable to the person entitled to make a claim for any loss or damage caused thereby.</p>		<p>as goods, the carrier shall be liable for the loss or damage resulting from the loss of, or damage to, the vehicle or to its removable parts arising between the time of taking over for carriage and the time of delivery and for loss or damage resulting from exceeding the transit period, unless he proves that the loss or damage was not caused by his fault.</p> <p>Art.31§1 (Restricted liability) In respect of goods which, by reason of their nature, are generally subject to wastage in transit by the sole fact of carriage, the carrier shall only be liable to the extent that the wastage exceeds the following allowances, whatever the length of the route: a) two per cent of the mass for liquid goods or goods consigned in a moist condition; b) one per cent of the mass for dry goods.</p> <p>Art. 15 § 3 The carrier shall be liable for any consequences arising from the loss or misuse of the documents referred to in the consignment note and accompanying it or deposited with the carrier, unless the loss of the documents or the loss or damage caused by the misuse of the documents has been caused by circumstances which the carrier could not avoid and the consequences of which</p>		<p>circumstances constituting grounds for the carrier's liability for the loss or shortage of, or damage to (spoilage of), the goods, shall be certified by the formal report.</p> <p>§ 3. The carrier shall be liable for exceeding the goods delivery period.</p> <p>Article 39 Limits of a carrier's liability § 1. The limit of a carrier's liability shall not exceed the amount of compensation payable by the carrier for the loss of goods.</p>	

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			<p>he was unable to prevent. Nevertheless any compensation payable shall not exceed that provided for in the event of loss of the goods.</p> <p>Art. 19 § 6 In the case of fault of the carrier he shall be liable for the consequences of failure to carry out an order or failure to carry it out properly. Nevertheless, any compensation payable shall not exceed that provided for in case of loss of the goods.</p> <p>Art. 19 § 7 If the carrier implements the consignor's subsequent modifications without requiring the production of the duplicate of the consignment note, the carrier shall be liable to the consignee for any loss or damage sustained by him if the duplicate has been passed on to the consignee. Nevertheless, any compensation payable shall not exceed that provided for in case of loss of the goods.</p>			
Burden of proof	<p>Art. 18.1 The burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier. Art. 18.2 When the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so</p>		<p>Art. 25 § 1 The burden of proving that the loss, damage or exceeding of the transit period was due to one of the causes specified in Article 23 § 2 shall lie on the carrier.</p> <p>Art. 25 § 2 When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks referred to in</p>		<p>Article 41 Burden of proof § 1. The burden of proving that loss or shortage of, or damage to (spillage of) goods occurred as a result of one of the circumstances specified in subparagraphs 1 and 4 of § 2 of Article 39 'Limits of carrier liability' shall be borne by the carrier. § 2. If it is established that the loss or shortage of, or damage to (spillage of) the goods could have occurred</p>	<p><i>With respect to the general rule of burden of proof, there are no differences in CMR, CIM or SMGS.</i></p> <p><i>In SMGS, there is a number of cases where the carrier is a priori relieved from the liability; there are some additional specific reasons regarding the right of the consignee or consignor to prove the contrary.</i></p>

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<p>Exemptions from liability</p>	<p>caused. 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 these risks.</p> <p>Art. 17.2 The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. Art. 17.4 (Special risks - burden of proof reversed, Art. 18.2) Subject to article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one more of the following circumstances:</p>	<p>IRU GCR, clause 18 cf. to Art. 17.2 and 17.4 of the CMR Convention. Strikes and demonstrations may be considered as grounds for exemption.</p>	<p>Article 23 § 3, it shall be presumed that it did so arise. <u>The person entitled</u> shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.</p>		<p>as a result of the circumstances specified in subparagraphs 2, 3 and 5-10 of § 2 and subparagraphs 2 and 3 of § 7 of Article 39 'Limits of carrier liability', the damage shall be considered to have occurred as a result of those circumstances <u>unless the consignor or the consignee proves otherwise</u>. § 3. The burden of proving that the exceedance of the goods delivery period was not attributable to the carrier shall be borne by the carrier.</p> <p>Article 39 Limits of a carrier's liability § 2. The carrier shall be relieved of liability for loss or shortage of, damage to (spoilage of) goods accepted for carriage if these have occurred: 1) due to circumstances which the carrier could not avert and the elimination of which was beyond its control; 2) due to the inadequate quality of goods, unit containers or packaging, or owing to particular natural and physical properties of goods, unit containers or packaging that has caused damage to (spoilage of) them; 3) through the fault of the consignor or the consignee, or in consequence of their requirements, owing to which blame cannot be</p>	<p>All three Conventions – CIM, SMGS and CMR – provide for exemptions from liability. Similar regulation: In case of general grounds of exemption from liability (Article 17.2 CMR/Article 23 § 2 CIM/ Article 39 subparagraphs 1 and 4 of § 2 SMGS), the carrier has to prove that the loss, damage or delay was caused by one of the circumstances set out in the general grounds. Thus, he can be relieved of liability. In case of special risks of exemption from liability, the exemptions from liability in accordance with Article 17.4, CMR/Article 23 § 3 CIM grant special privileges to the carriers for the specific risks of railway or road transport. The claimants have to prove that those risks were not the cause of the loss or damage.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>(a) use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;</p> <p>(b) the lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;</p> <p>(c) handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee;</p> <p>(d) the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;</p> <p>(e) insufficiency or inadequacy of marks or numbers on the packages;</p> <p>(f) the carriage of livestock.</p>		<p>pursuant to the General Conditions of Carriage¹³ or when it has been expressly agreed and entered in the consignment note; subject to damage sustained by the goods because of atmospheric influences, goods carried in intermodal transport units¹⁴ and in closed road vehicles carried on wagons shall not be considered as being carried in open wagons; if for the carriage of goods in open sheets, the carrier shall assume the same liability as falls to him for carriage in open wagons without sheeting, even in respect of goods which, according to the General Conditions of Carriage, are not carried in open wagons;</p> <p>b) absence or inadequacy of packaging in the case of goods which by their nature are liable to loss or damage when not packed or when not packed properly;</p> <p>c) loading of the goods by the consignor or unloading by the consignee;</p> <p>d) the nature of certain goods which particularly exposes them to total or partial loss or damage, especially through breakage, rust, interior and spontaneous decay, desiccation or wastage;</p> <p>e) irregular, incorrect or</p>		<p>attributed to the carrier;</p> <p>4) for reasons connected with the loading or unloading of goods, if these operations were performed by the consignor or the consignee;</p> <p>5) due to the absence of unit containers or packaging of the goods which were necessary for their carriage;</p> <p>6) as a result of the fact that the consignor handed the goods over for carriage under an incorrect, inaccurate or incomplete designation, or without complying with the terms of this Agreement;</p> <p>7) due to loading of goods by the consignor onto a wagon or into a container not suitable for the carriage of the goods in question;</p> <p>8) due to the incorrect selection, by the consignor, of the method of carriage of perishable goods or of the type of wagon (container);</p> <p>9) due to failure by the consignor or by the consignee to complete or inadequate completion of customs or other administrative formalities;</p> <p>10) due to the checking, detention or confiscation of goods by public authorities, for reasons beyond the carrier's control.</p> <p>§ 3. The carrier shall not be liable for loss or shortage of, or damage to (spillage of)</p>	<p>(reversal of the burden of proof in accordance with Article 18.2 CMR/Article 25 § 2 CIM).</p> <p>SMGS also provides for special risks where the carrier is exempt from liability. The exemptions from liability for the carrier are extensive and a priori in SMGS (Article 39, subparagraphs 2, 3 and 5-10 of § 2 and subparagraphs 2 and 3 of § 7).</p> <p>In case of total or partial loss of the goods, both the CIM and SMGS conventions specify a timeframe for claiming the loss of those goods (presumption of the loss of the goods).</p>

¹³ According to Art. 3 lit. c) CIM "General Conditions of Carriage" means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract

of carriage, an integral part of it.

¹⁴ According to Art. 3 lit. d) CIM "intermodal transport unit" means a container, swap body, semi-trailer or other comparable loading unit used in intermodal transport.

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMLUR	DOCUMENTS CIT	SMGS	COMMENTS
			<p>incomplete description or numbering of packages; f) carriage of live animals; g) carriage which, pursuant to applicable provisions or agreements made between the consignor and the carrier and entered on the consignment note, must be accompanied by an attendant, if the loss or damage results from a risk which the attendant was intended to avert.</p>		<p>goods accepted for carriage if this happened during carriage subject to special contractual terms and exemption from liability is provided for in these special contractual terms. § 4. The carrier shall not be liable for shortages of: 1) goods transported in unit containers or in bundles, if the total number of items in intact unit containers or bundles are delivered to the consignee and there are no external signs of access to the contents that could have caused a partial loss of the goods; 2) goods transported without unit containers or bundling if the total number of intact items are delivered to the consignee and there are no external signs of access to the contents that could have caused a shortage of the goods; 3) goods, if the goods loaded by the consignor into wagons, ITUs or road vehicles are delivered to the consignee with the consignor's seals intact and there are no external signs of access to the goods that could have caused a shortage of the goods; 4) goods in containers loaded by the consignor onto a wagon (with doors facing inside), if the containers on this wagon continued their journey without being re-arranged and were handed over to the consignee without the checking of seals and</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF/CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>without any external signs of access to the goods that could have caused a shortage of the goods;</p> <p>5) goods accepted for carriage in open rolling stock, if the goods have arrived in an intact wagon without reloading en route, and there are no signs indicating that a shortage of goods occurred during carriage;</p> <p>6) removable or spare parts stowed in sealed ITUs or road vehicles, if these ITUs or road vehicles were delivered to the consignee with the consignor's seals intact.</p> <p>§ 5. The carrier shall not be liable for damage to goods accepted for carriage in open rolling stock if the goods have arrived in intact wagons without reloading en route and there are no signs indicating damage to (spoilage of) the goods during carriage.</p> <p>§ 6. The carrier shall be relieved of liability for exceeding the goods delivery period if the exceedance was caused:</p> <ol style="list-style-type: none"> 1) by circumstances which the carrier could not avert and the elimination of which was beyond its control; 2) through the fault of the consignor or of the consignee, or in consequence of their requirements, whereby blame cannot be attributed to the carrier; 3) owing to non-completion or inadequate completion of 	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>customs or other administrative formalities by the consignor or the consignee, or a person authorised by them.</p> <p>§ 7. In international through railway-ferry traffic, the carrier shall also be released from liability for loss or shortage of, damage to (spoilage of), or exceeding the delivery period for goods accepted for carriage if the loss, shortage, damage (spoilage) or exceedance of the goods delivery period occurred as a result of:</p> <ol style="list-style-type: none"> 1) a fire, if the carrier proves that the fire did not occur through its fault or through the fault of other persons whose services it uses to execute the contract of carriage, when these other persons were performing their duties; 2) lifesaving measures or reasonable measures to save property; 3) a hazard, danger or accidents. <p>The carrier may refer to these reasons for release from liability only if it proves that the loss or shortage of, damage to (spoilage of), or exceedance of the delivery period of goods took place on the waterway section of the route during the period from commencement of the loading of the goods (loading the container with goods) in a wagon for waterway transport and before its unloading from the waterway transport.</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/UR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>Article 43 Limitation of liability for shortage of mass of goods § 1. In respect of goods which, by reason of their nature, are subject to wastage during carriage, the carrier shall, whatever the distance travelled by the goods, be liable only to the extent that the shortage exceeds the following allowances: 1) 2% of mass for liquid goods or goods presented for carriage in a wet (moist) condition; 2) 1% of mass for dry goods. In the case of goods transported in bulk, if these are transhipped en route, the above allowances shall be increased by 0.3% for each transhipment. § 2. In respect of goods which, by reason of their nature, are subject to wastage during carriage, the carrier shall, whatever the distance travelled by the goods, be liable only to the extent that the shortage exceeds 0.2% of the mass of the goods. § 3. Where several cargo packages are carried under a single consignment note, wastage shall be calculated separately for each package if its mass has been shown separately in the consignment note or can be ascertained by other means. § 4. When calculating compensation for the loss or shortage of several cargo packages, no deductions for the allowances laid down in</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM UR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>Art.19 Delay in delivery shall be said to occur when the goods have not been delivered within the agreed time-limit or when, failing an agreed time-limit, the actual duration of the carriage having regard to the circumstances of the case, and in particular, in the case of partial loads, the time required for making up a complete load in the normal way, exceeds the time it would be reasonable to allow a diligent carrier.</p>		<p>Art.16 § 1. The consignor and the carrier shall agree the transit period. In the absence of an agreement, the transit period must not exceed that which would result from the application of §§ 2 to 4. § 2. Subject to §§ 3 and 4, the maximum transit periods shall be as follows: a) for wagon-load consignments - period for consignment 12 hours, - period for carriage, for each 400 km or fraction thereof 24 hours; b) for less than wagon-load consignment - period for consignments 24 hours, - period for carriage, for each 200 km or fraction thereof 24 hours. The distances shall relate to the agreed route or, in the absence thereof, to the shortest possible route. § 3. The carrier may fix additional transit periods of specified duration in the following cases : a) consignments to be carried - by lines of a different gauge, - by sea or inland waterway, - by road if there is no rail link, b) exceptional circumstances causing an exceptional increase in traffic or exceptional</p>		<p>§ 1 and § 2 of this Article shall be made in respect of lost goods or short packages. Article 24 Goods delivery period § 1. Save where otherwise agreed by the consignor and the carrier, the delivery period shall be determined for the whole of the route followed by the goods and must not exceed the period calculated on the basis of the rates established in this Article § 2. The goods delivery period shall be determined on the basis of the following rates: - for containers: 1 day (24 hours) per 150 km or part thereof; - for other consignments: 1 day (24 hours) per 200 km or part thereof. Delivery periods shall be set by the carrier for the goods requiring a speed restriction due to their technical characteristics, out-of-gauge goods and goods travelling on special trains with a separate locomotive. For goods being moved in international through railway-ferry traffic, the delivery period for the waterway section of the journey shall be set by the carrier on that section of the journey. § 3. The goods delivery period shall increase by one day for operations connected with shipment of the goods. The goods delivery period</p>	<p>Delay in delivery is different. <i>CIM</i> limits the liability for delays in delivery to <u>four times the amount of freight charges</u>, whereas <i>SMGS</i> has of penalties if the carrier fails to comply with the goods delivery deadline (Article 45 <i>SMGS</i>). In case of delay, <i>SMGS</i> provides for gradually increasing compensation up to 30% of the carriage charge. <i>CMR</i> only provides for compensation for delay that shall not exceed the carriage charges. <i>CIM</i> and <i>SMGS</i> have provisions setting periods for delivery. Under the <i>CIM</i> rules, the general period for the delivery of goods is 400 km for express shipments. Under the <i>SMGS</i> rules the period for carriage for containers is 1 day (24 hours) per 150 km or part thereof; - for other consignments: 1 day (24 hours) per 200 km or part thereof. <i>CMR</i> uses the expression "the reasonable time allowed to the carrier" in cases in which no time limit has been agreed. In all cases, the time of delivery (<i>CMR</i>), transit period (<i>CIM</i>) or delivery period</p>
Delay in delivery						

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
			<p>operating difficulties. The duration of the additional transit periods must appear in the General Conditions of Carriage. § 4. The transit period shall start to run after the taking over of the goods; it shall be extended by the duration of a stay caused without any fault of the carrier. The transit period shall be suspended on Sundays and statutory holidays.</p>		<p>shall increase by two days: - each time the goods are trans-shipped to wagons of a different gauge; - each time wagons or cargo on its own axles are changed over to bogies of another gauge; - for the carriage of goods in international through railway-ferry traffic. § 4. The delivery period shall be extended for the duration of any delay en route for reasons beyond the control of the carrier. § 5. The duration of the goods delivery period shall begin at 00:00 on the day following the day on which the contract of carriage is concluded, and shall end when the consignee is given notice that the goods have arrived, an incomplete day (24-hour period) being counted as a full day. § 6. Where the goods are distributed en route, the delivery period shall be calculated for that portion of the goods which has arrived according to the consignment note. § 7. The delivery period shall be deemed to have been complied with if the goods have arrived at the destination station before the period has expired and the carrier notifies the consignee that the goods have arrived and can be handed over to the consignee. The procedure for notifying the consignee shall be determined by the national law in force at the</p>	<p>(SMGS) can be agreed between the parties to the transport contract.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
<p>Presumption of loss or damage in case of reassignment</p>			<p>Art 28 (Presumption of loss or damage in case of reassignment) § 1. When a consignment consigned in accordance with these Uniform Rules has been reassigned subject to these same Rules and partial loss or damage has been ascertained after that reassignment, it shall be presumed that it occurred under the latest contract of carriage if the consignment remained in the charge of the carrier and was reassigned in the same condition as when it arrived at the place from which it was reassigned. § 2. This presumption shall also apply when the contract of carriage prior to the reassignment was not subject to these Uniform Rules, if these Rules would have applied in the case of a through consignment from the first place of consignment to the final place of destination. § 3. This presumption shall also apply when the contract of carriage prior to the reassignment was subject to a convention concerning international through carriage of goods by rail comparable with these Uniform Rules, and when this convention contains the same presumption of law in favour of consignments consigned in accordance with these Uniform Rules.</p>		<p>place where delivery takes place. Article 40 Presumption in the event of a change in the legal regime governing the contract of carriage If, in the case of carriage of goods from a third state after the reissuance of the consignment note owing to a change in the legal regime governing the contract of carriage, in accordance with the terms of this Agreement, there is found to be damage to (spillage of) or shortage of the goods, and the consignment was accepted by the carrier without remarks, it shall be presumed, until the contrary is proved, that the damage to (spillage of) or shortage of the goods occurred during the execution of the last contract of carriage.</p>	<p><i>Legal duality in international rail freight traffic under CIM and SMGS.</i> <i>In case of a reassignment of goods, any loss or damage is presumed to be treated based on the second transport contract if the consignment remained in the charge of the carrier and was reassigned in the same condition as when it arrived at the place from which it was reassigned.</i> <i>Under CMR, there is no provision regarding the change in legal regime and therefore there exists no presumption of this event.</i></p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>Art.20.1 The fact that goods have not been 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 goods, shall be conclusive evidence of the loss of the goods, and the person entitled to make a claim may thereupon treat them as lost.</p>		<p>Art. 29 § 1 The person entitled may, without being required to furnish further proof, consider the goods as lost when they have not been delivered to the consignee or placed at his disposal within thirty days after the expiry of the transit periods.</p>		<p>Art 27 § 1. If the goods have not been delivered to the consignee within 10 days upon the expiry of the goods delivery period, the consignee or the consignee shall have the right to apply, respectively, to the contractual carrier or the carrier delivering the goods for the goods to be traced. Applying for the goods to be traced shall not be regarded as lodging a claim for loss of the goods. § 2. The goods shall be deemed lost if they have not been delivered to the consignee within 30 days upon expiry of the goods delivery period. § 3. If the goods have arrived at the destination station after 30 days have elapsed since the delivery period expired, the carrier must notify the consignee accordingly. The consignee must accept the goods if they arrive no later than six months upon the expiry of the delivery period, and return to the carrier the amounts which the carrier had paid him as compensation for the loss of goods, the refund of carriage charges and other costs of carriage. If the compensation was paid to the consignee, the consignee must return the amount of the compensation to the carrier. Nevertheless, the right shall remain to claim a penalty from the carrier for</p>	<p><i>CIM, CMR and SMGS specify a limited timeframe for claiming the loss of the goods (presumption of total loss).</i></p>
<p>Total loss</p>						

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
<p>Compensation</p>	<p>Art.23.1 When, under the provisions of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.</p> <p>Art.23.2 The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to normal value of goods of the same kind and quality.</p> <p>Art.25.1 In case of damage, the carrier shall be liable for the amount by which the goods have diminished in value, calculated by reference to the value of the goods fixed in accordance with article 23, paragraphs 1, 2 and 4.</p>		<p>Art. 30 § 1 In case of total or partial loss of the goods, the carrier must pay, to the exclusion of all other damages, compensation calculated according to the commodity exchange quotation or, if there is no such quotation, according to the current market price, or if there is neither such quotation nor such price, according to the usual value of goods of the same kind and quality on the day and at the place where the goods were taken over.</p> <p>Art. 32 § 1 In case of damage to goods, the carrier must pay compensation equivalent to the loss in value of the goods, to the exclusion of all other damages. The amount shall be calculated by applying to the value of the goods defined in accordance with Article 30 the percentage of loss in value noted at the place of destination.</p>		<p>exceeding the goods delivery period and to claim compensation from it for total loss, insufficient mass, damage (spoilage), or reduction of the quality of the goods.</p> <p>Article 42 Amount of compensation in the event of loss or shortage of goods § 1. In cases where this Agreement requires the carrier to compensate the consignor or the consignee for loss or shortage of goods, the amount of compensation shall be determined on the basis of the value of goods. If goods transported with a declaration of value are lost or short, the carrier shall pay to the consignor or the consignee the amount of the declared value or the portion of the declared value corresponding to the portion of the goods which has been lost. § 2. In addition to the compensation provided for in § 1 of this Article, carriage charges and other costs of the consignor (consignee) received by the carrier for the carriage of (the portion of) the goods lost shall be refunded if they have not been included in the cost of the goods. § 3. In calculating the amount of compensation in the event of a shortage in terms of mass, the carrier shall have the right to offset surplus mass against the shortage if, at the time of</p>	<p>Same compensation: CMR was inspired by older versions of CIM.</p> <p>The three Conventions – CMR, CIM and SMGS – each specify how compensation should be calculated.</p> <p>In comparison to CIM and CMR, SMGS has a very differentiated system for how compensation should be calculated.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF-CIM UR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>delivery of goods of the same designation and quality which arrived from the same consignor to the same consignee, including if they have been transhipped en route, there was a shortage of goods under one consignment note and a surplus under another one.</p> <p>Article 44</p> <p>Amount of compensation in the event of damage to (spoilage of) goods</p> <p>§ 1. In cases where this Agreement requires the carrier to compensate the consignor or the consignee for damage to (spoilage of) goods, the amount of compensation payable shall be equivalent to the amount by which the value of the goods has decreased.</p> <p>§ 2. In the case of damage to (spoilage of) goods transported with a declaration of value, the carrier shall reimburse an amount representing the portion of the declared value corresponding to the percentage decrease in the value of the goods resulting from the damage to (spoilage of) the goods.</p> <p>§ 3. The amounts of compensation provided for in § 1 and § 2 of this Article shall be determined in accordance with the provisions of § 1 of Article 42.</p> <p>Amount of compensation for loss or shortage of goods', taking into account the extent of the reduction in the value of goods, established at the place of</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/LUR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>destination in accordance with national law.</p> <p>Article 45 Amount of compensation for exceeding the goods delivery period</p> <p>§ 1. If the carrier has failed to comply with the goods delivery deadline calculated in accordance with Article 24 'Goods delivery deadline', the carrier shall pay compensation for exceeding the delivery deadline in the form of a penalty.</p> <p>§ 2. The amount of penalty for exceeding the goods delivery deadline shall be determined on the basis of the carriage charges of the carrier who caused the delivery deadline to be exceeded, and the value (length) of the exceedance of the delivery deadline, calculated as the ratio of the exceedance of the delivery deadline (in days) to the total delivery period, namely:</p> <p>6% of the carriage charge when the exceedance of the delivery deadline is not more than one tenth of the total delivery period;</p> <p>18% of the carriage charges when the exceedance of the delivery deadline is more than one tenth but not more than three tenths of the total delivery period;</p> <p>30% of the carriage charge when the exceedance of the delivery deadline is more than three tenths of the total delivery period.</p> <p>§ 3. In cases where this Agreement requires the</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/UR	DOCUMENTS CIT	SMGS	COMMENTS
<p>Limitation of compensation</p>	<p>Art.23.3 Compensation shall not, however, exceed 8.33 units of account per kilogram of gross weight short. Art.23.4 In addition, the carriage charges, Customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in case of total loss and in proportion to the loss sustained in case of partial loss, but no further damage shall be payable. Art. 23.5 In the case of delay if the claimant proves that damage has resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges. Art.25.2: In case of damage</p>	<p>IRU GCRLS, clause 14.2: provider's liability limited to 8.33 SDRs per kilo, regardless of the nature of logistics services, and to direct damages to properties to the exclusion of other.</p>	<p>Art. 30 § 2 Compensation shall not exceed 17 units of account per kilogramme of gross mass short. Art. 33 § 1 If loss or damage results from the transit period being exceeded, the carrier must pay compensation not exceeding four times the carriage charge. Art. 33 § 3 In case of partial loss of the goods, the compensation provided for in § 1 shall not exceed four times the carriage charge in respect of that part of the consignment which has not been lost.</p>		<p>carrier to pay compensation for the loss of goods, no penalty shall be paid for exceeding the goods delivery deadline. In the event of shortage of goods, the penalty for exceeding the delivery period shall be paid in an amount determined on the basis of the portion of the goods delivered. In the case of damage to (spoilage of) goods, the payment of compensation for exceeding the delivery deadline shall not preclude the payment of compensation provided for in Article 44 'Amount of compensation in the event of damage to (spoilage of) goods'.</p>	
					<p>Article 42 Amount of compensation in the event of loss or shortage of goods § 1. In cases where this Agreement requires the carrier to compensate the consignee or the consignee for loss or shortage of goods, the amount of compensation shall be determined on the basis of the value of goods. If goods transported with a declaration of value are lost or short, the carrier shall pay to the consignee or the consignee the amount of the declared value or the portion corresponding to the portion of the goods which has been lost. (...)</p>	<p>Limits of compensation are different: CMR has lower limits (8.33 SDR/kg) than CIM (17 SDR/kg). SDR are calculated in national currencies. SMGS provides for full compensation up to the amount of the value of the goods. CMR only provides for compensation for delay that do not exceed the carriage charges, Article 23.5. CIM provides for compensation for delay of up to four times the carriage charge, Article 33 § 1. In case of delay, SMGS provides for gradual compensation of up to 30%</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>The compensation may not, however, exceed:</p> <p>a) if the whole consignment has been damaged the amount payable in the case of total loss;</p> <p>b) if part only of the consignment has been damaged, the amount payable in case of loss of the part affected.</p>				<p>Article 44 Amount of compensation in the event of damage to (spoilage of) goods § 1. In cases where this Agreement requires the carrier to compensate the consignor or the consignee for damage to (spoilage of) goods, the amount of compensation payable shall be equivalent to the amount by which the value of the goods has decreased. § 2. In the case of damage to (spoilage of) goods transported with a declaration of value, the carrier shall reimburse an amount representing the portion of the declared value corresponding to the percentage decrease in the value of the goods resulting from the damage to (spoilage of) the goods. (...) Article 45 Amount of compensation for exceeding the goods delivery period § 1. If the carrier has failed to comply with the goods delivery deadline calculated in accordance with Article 24 'Goods delivery deadline', the carrier shall pay compensation for exceeding the delivery deadline in the form of a penalty. (...)</p>	<p>of the carriage charge; while CIM UR provides for compensation of four times of the carriage charge. Calculation of the carriage charges in SMGS is made in accordance with the tariffs applied by the carriers performing the carriage.</p>
Extension of the carrier's liability/Higher limits of compensation	<p>Art.24 The sender may, against payment of a surcharge to be agreed upon, declare in the consignment note a value for the goods exceeding the limit laid</p>		<p>Art.5 (...) Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in these Uniform Rules.</p>		<p>Article 17 Declaration of value of goods § 1. By agreement between the carrier and the consignor, the carriage of goods may be performed</p>	<p>Higher compensation is a possibility set out in all three Conventions - extension of the carrier's liability in the interest of the customer is provided for in the CIM.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>down in article 23, paragraph 3, and in that case the amount of the declared value shall be substituted for that limit.</p> <p>Art.26.1 The sender may, against payment of a surcharge to be agreed upon, fix the amount of a special interest in delivery in the case of loss or damage or of the agreed time-limit being exceeded, by entering such amount in the consignment note.</p>		<p>Art. 34 The consignor and the carrier may agree that the consignor shall declare in the consignment note a value for the goods exceeding the limit provided for in Article 30 § 2. In such a case the amount declared shall be substituted for that limit.</p> <p>Art. 35 The consignor and the carrier may agree that the consignor may declare, by entering an amount in figures in the consignment note, a special interest in delivery, in case of loss, damage or exceeding of the transit period. In case of a declaration of interest in delivery further compensation for loss or damage proved may be claimed, in addition to the compensation provided for in Articles 30, 32 and 33, up to the amount declared.</p>		<p>with a declaration of the value of goods. § 2. The carrier shall have the right to demand a supplementary payment for the declaration of the value of goods. Article 42 Amount of compensation in the event of loss or shortage of goods § 1. (...) If goods transported with a declaration of value are lost or short, the carrier shall pay to the consignor or the consignee the amount of the declared value or the portion of the declared value corresponding to the portion of the goods which has been lost. Article 44 Amount of compensation in the event of damage to (spoilage of) goods § 2. In the case of damage to (spoilage of) goods transported with a declaration of value, the carrier shall reimburse an amount representing the portion of the declared value corresponding to the percentage decrease in the value of the goods resulting from the damage to (spoilage of) the goods. § 3. The amounts of compensation provided for in § 1 and § 2 of this Article shall be determined in accordance with the provisions of § 1 of Article 42 'Amount of compensation for loss or shortage of goods', taking into account the extent of the reduction in the value of goods.</p>	<p>In CIM, CMR and SMGS, the carrier and the consignor can declare a higher value of the goods. In addition, in CMR and CIM the consignor may declare a special interest in delivery. Under SMGS, there is no provision regarding the declaration of a special interest in delivery.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>Art.27.1 The claimant shall be entitled to claim interest on compensation payable. Such interest, calculated at five per centum per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which legal proceedings were instituted.</p>		<p>Art. 37 § 2 The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 43 or, if no such claim has been made, from the day on which legal proceedings were instituted. Art. 37 § 3 If the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.</p>		<p>established at the place of destination in accordance with national law.</p>	<p>Both CIM and CMR provide for similar rates of interest on compensation (5%) for the customer (consignor, consignee). SMGS stipulates no interest (at all) on compensation. Neither CIM nor CMR contain provisions for interest on compensation for the carrier. In such a case it is necessary to refer to the national law.</p>
Interest						
Loss of right to limit responsibility	<p>Art.29.1 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 his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct.</p>		<p>Art. 36 The limits of liability provided for in Article 15 § 3, Article 19 §§ 6 and 7, Article 30 and Articles 32 to 35 shall not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.</p>			<p>There are differences between all three Conventions. SMGS provides for no loss of the right to invoke the limits of liability because of the full compensation up to the amount of the value of the goods. CMR and CIM provide for the loss of the right to limit responsibility, but although CMR does not define wilful misconduct or default equivalent to wilful misconduct, the CIM defines it properly. The lack of such a definition in the CMR has created divergence in the jurisprudence, as evidenced</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
<p>Claims and actions</p>	<p>Art.30.1 If the consignee takes delivery of the goods without duly checking their condition with the carrier or without sending him reservations giving a general indication of the loss or damage, not later than the time of delivery in the case of apparent loss or damage and within seven days of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent, the fact of this taking delivery shall be prima facie, evidence that he has received the goods in the condition described in the consignment note. In the case of loss or damage which is not apparent the reservations referred to shall be made in writing.</p> <p>Art.30.3 No compensation shall be payable for delay in delivery unless a reservation has been sent in writing to the carrier, within twenty-one days from the time that the goods were placed at the disposal of the consignee.</p>	<p>IRU GCR, clause 17.3: in case of damage which is not apparent, reservations shall be made in the forms and within the time-limits foreseen in Art.30.1 of the CMR Convention.</p>	<p>Art. 42 § 1 When partial loss or damage is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the goods, their mass and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.</p> <p>Art. 43 § 1 Claims relating to the contract of carriage must be addressed in writing to the carrier against whom an action may be brought.</p>	<p>GTC-CIM, Point 10: Grounds for claims must be given (CIM Article 43). All the documents to substantiate the claim, and in particular the value of the goods, are to be attached;</p> <p>GTM-CIT, Working Sheet Nb. 06-01: Loss and damage: Filling out a formal report, 10-01: Processing of claims, Refund of charges, 10-02: Compensation; Appendix 20: CIT20 Formal Report.</p>	<p>Article 29 Formal report § 1. The carrier shall draw up a formal report if, on verification of the goods during their carriage or delivery, it finds: 1) discrepancies between the name, mass or number of cargo packages and the particulars specified in the consignment note; 2) discrepancies between the marking of cargo packages and the particulars specified in the consignment note concerning the marking of cargo packages, the station and the railway of destination, the consignee and the number of cargo items; 3) damage to (spoilage of) goods; 4) that the consignment note, or any of its separate sheets concerning the goods in question, or goods listed in the consignment note in question are missing.</p> <p>§ 2. If, under the national law of the country of destination of the goods, a formal report can be drawn up after the goods have been delivered to the consignee, the consignee shall be entitled to ask the carrier which delivered the goods to draw up a formal report for any reason which could not have been detected by means of external inspection when the goods were delivered.</p>	<p>by the "forum shopping" by claimants.</p> <p>Whereas CMR establishes the need for written reservations related to the non-apparent loss or damage of the goods or delay in delivery, CIM and SMGS provide for the need of a formal report (CIT20-Product of the CIT).</p> <p><i>In case of loss or damage of the goods or delay in delivery, CMR, CIM and SMGS provide for procedural provisions. All three Conventions provide for a claims procedure to be operated before bringing any legal action against the carrier, but in the CIM this is only optional.</i></p> <p><i>The formal claims procedure is mandatory under SMGS; otherwise the customer is not entitled to bring a legal action before of the national courts.</i></p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM UR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>Such a request to the carrier which delivered the goods shall be made by the consignee immediately after establishing loss or shortage of, damage to (spoilage of) goods, and within three days upon the delivery of the goods at the latest.</p> <p>Article 46 Claims § 1. The right to make claims against the carrier shall belong to the consignor and the consignee. The right to make claims for refund of overpayments of carriage charges pursuant to § 4 of Article 31 'Payment of carriage charges and penalties' of this Agreement shall also belong to any person who has paid these carriage charges in accordance with § 2 of Article 31 'Payment of carriage charges and penalties' of this Agreement.</p> <p>Assignment of the right to make claims is not permitted.</p> <p>§ 2. Claims shall be made in writing, with appropriate justification and an indication of the amount claimed.</p> <p>Claims may be made: by the consignor, against the contractual carrier; by the consignee, against the carrier delivering the goods.</p> <p>§ 3. Claims shall be made separately for each consignment, except for: a claim for refund of</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>overpayments of carriage charges. Such a claim may be made for several consignments; where one formal report has been drawn up for several consignments. In such cases, a claim shall be made for all consignments indicated in the formal report.</p> <p>§ 4. No claim for an amount equivalent to 23 Swiss francs or less per consignment shall be satisfied. If a claim is made for a higher amount and is recognised as compensable in an amount which is equivalent to 23 Swiss francs or less, that amount shall not be paid to the claimant.</p> <p>§ 5. Claimants must attach to their claim the supporting documents specified by the Rules governing the Carriage of Goods.</p> <p>The originals of the consignment note and the formal report shall be attached.</p> <p>§ 6. Claims not made in compliance with § 3 and § 5 of this Article shall be returned by the carrier to the claimant without consideration, no later than 15 days of the date of its receipt by the carrier, with an indication of the reason for its return. In such cases, the period of limitation referred to in § 3 of Article 48 'Period of limitation' shall not be suspended. If the carrier returns a claim to the claimant upon expiry of the</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM UR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>15-day period, the limitation period shall be suspended from the day following the expiry of this term until the day when the carrier sends the claim to the claimant. The return of the claim by the carrier to the claimant shall not constitute its rejection and shall not entitle the claimant to bring the case before a court.</p> <p>§ 7. The carrier shall, within 180 days of receipt of a claim, consider the claim, respond to the claimant and, in the event of complete or partial recognition of the claim, pay the due amount to the claimant.</p> <p>§ 8. In the case of partial or complete rejection of a claim, the carrier shall notify the claimant in writing of the grounds for rejecting the claim and at the same time return the documents attached to the claim.</p> <p>§ 9. In all cases to which this Agreement applies, any claim may be lodged with a carrier only subject to the conditions and within the scope of the provisions of this Agreement. This provision shall apply to all claims in respect of staff members and other persons for whom the carrier is liable under the provisions of Article 38 'Persons for whose actions the parties to the contract of carriage are liable'.</p> <p>Article 47 Claims under the contract of carriage. Jurisdiction § 1. An action may be</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMLUR	DOCUMENTS CIT	SMGS	COMMENTS
					<p>brought only after a claim has been made, and only against the carrier against which the claim was made. The right to bring an action under this Agreement shall belong to the person who has the right to make a claim against the carrier.</p> <p>§ 2. The right to make a claim and bring an action shall arise:</p> <ul style="list-style-type: none"> for compensation for shortage of or damage to (spoilage of) goods; and for exceeding the goods delivery period – from the day on which the goods are delivered to the consignee; for compensation for loss of goods – from the 30th day upon expiry of the delivery period; 3) for refund of overpayments of carriage charges – from the day on which the carriage charges were paid; 4) for other claims – from the day when the circumstances constituting grounds for making the claims arose. <p>§ 3. An action may be brought:</p> <ul style="list-style-type: none"> 1) if the carrier has not responded to a claim within the period prescribed for consideration of the claim; 2) if, within the period prescribed for consideration of a claim, the carrier has notified the claimant of complete or partial rejection of the claim. <p>§ 4. Action shall be brought in a competent court at the respondent's location.</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
<p>Period of limitation Art.32.1 sentence 1 The period of limitation for an action arising out of carriage under this Convention shall be one year.</p> <p>Art. 32.1 sentence 2 Nevertheless, in the case of wilful misconduct, or such default as in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be three years.</p> <p><u>Starting point of the term of limitation</u> Art.32.1 sentence 3 The period of limitation shall begin to run: (a) in the case of partial loss, damage or delay in delivery, from the date of delivery; (b) in the case of total loss, from the thirtieth day after the expiry of the agreed time-limit or where there is no agreed time-limit from the sixtieth day from the date on which the goods were taken over by the carrier; (c) in all other cases, on the expiry of a period of three months after the making of the contract of carriage. Art. 32.4 A right of action which has become barred by lapse of time may not be exercised by way of counterclaim or set-off.</p> <p>Period of limitation; Starting point of the term of limitation</p>	<p>IRU GCRLS, clause 16: the period of limitation for an action resulting of the performance of logistics services shall be one year from the observation of the non-performance of the service agreed.</p>	<p>Period of limitation Art. 48 § 1 The period of limitation for an action arising from the contract of carriage shall be one year.</p> <p>Art. 48 § 1 lit. a to d the period of limitation shall be two years in the case of an action a) to recover a cash on delivery payment collected by the carrier from the consignee; b) to recover the proceeds of a sale effected by the carrier; c) for loss or damage resulting from an act or omission done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result; d) based on one of the contracts of carriage prior to the reassignment in the case provided for in Article 28.</p> <p><u>Starting point of the term of limitation</u> Art. 48 § 2 The period of limitation shall run for actions a) for compensation for total loss, from the thirtieth day after expiry of the transit period; b) for compensation for partial loss, damage or exceeding of the transit period, from the day when delivery took place; c) in all other cases, from the day when the right of action may be exercised.</p>		<p>Article 48 Limitation period § 1. Actions against carriers pursuant to this Agreement shall be brought: 1) within two months, where they concern exceedance of the goods delivery deadline; 2) within nine months, where brought on other grounds. § 2. The periods referred to in § 1 of this Article shall start from the moment when the right to bring an action referred to in § 2 of Article 47 'Claims under the contract of carriage. Jurisdiction' of this Agreement arose. The day on which the period of limitation commences shall not be included in the period. § 3. The lodging of a claim made in accordance with Article 46 'Claims' of this Agreement shall cause the limitation periods laid down in § 1 of this Article to be suspended. The limitation period shall recommence on the day on which the carrier notifies the claimant of complete or partial rejection of its claim, or from the day when the time limit laid down in § 7 of Article 46 'Claims' of this Agreement expires, if the carrier does not answer the claim. The re-lodging of a claim on the same grounds shall not cause the limitation periods provided for in § 1 of this Article to be suspended. § 4. The passing of limitation</p>	<p>The Periods of Limitation are different: the basic limitation of one year is the same in CMR and CIM; but whereas the CMR provides for an extension of this period to three years in cases of wilful misconduct, the CIM will only extend the period to two years, although it grants this extension in more situations. Furthermore, the period of limitation is different between CIM and SMGS: the basic limitation under the CIM is one year, as in CMR; but with SMGS it is just nine months.</p>	

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p><u>Suspension</u> Art.32.2 A written claim shall suspend the period of limitation (...) <u>Recommendation</u> Art.32.2 A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached thereto. If a part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of the receipt of the claim, or of the reply and of the return of the documents, shall rest with the party relying upon these facts. The running of the period of limitation shall not be suspended by further claims having the same object. Art. 32.3 Subject to the provisions of paragraph 2 above, the extension of the period of limitation shall be governed by the law of the court or tribunal seized of the case. That law shall also govern</p>		<p>The day indicated for the commencement of the period of limitation shall not be included in the period. Art. 48 § 4 A right of action which has become time-barred may not be exercised further, even by way of counter-claim or relied upon by way of exception.</p>		<p>periods shall constitute a ground for rejecting claims.</p>	
<p>Suspension of the period of limitation; Recommendation of the period of limitation</p>	<p><u>Suspension</u> Art.32.2 A written claim shall suspend the period of limitation (...) <u>Recommendation</u> Art.32.2 A written claim shall suspend the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached thereto. If a part of the claim is admitted the period of limitation shall start to run again only in respect of that part of the claim still in dispute. The burden of proof of the receipt of the claim, or of the reply and of the return of the documents, shall rest with the party relying upon these facts. The running of the period of limitation shall not be suspended by further claims having the same object. Art. 32.3 Subject to the provisions of paragraph 2 above, the extension of the period of limitation shall be governed by the law of the court or tribunal seized of the case. That law shall also govern</p>		<p><u>Suspension</u> Art. 48 § 3 The period of limitation shall be suspended by a claim in writing in accordance with Art. 43 (...) Art. 48 § 5. Otherwise, the suspension and interruption of periods of limitation shall be governed by national law. <u>Recommendation</u> Art. 48 § 3 The period of limitation shall be suspended by a claim in writing in accordance with Article 43 until the day that the carrier rejects the claim by notification in writing and returns the documents submitted with it. If part of the claim is admitted, the period of limitation shall start to run again in respect of the part of the claim still in dispute. The burden of proof of receipt of the claim or of the reply and of the return of the documents shall lie on the party who relies on those facts. The period of limitation shall not be suspended by further claims having the same object.</p>		<p>Article 48 Limitation period § 3. The lodging of a claim made in accordance with Article 46 'Claims' of this Agreement shall cause the limitation periods laid down in § 1 of this Article to be suspended. The limitation period shall recommence on the day on which the carrier notifies the claimant of complete or partial rejection of its claim, or from the day when the time limit laid down in § 7 of Article 46 'Claims' of this Agreement expires, if the carrier does not answer the claim. The re-lodging of a claim on the same grounds shall not cause the limitation periods provided for in § 1 of this Article to be suspended.</p>	<p>The period of limitation may be suspended in all three Conventions by means of a written claim (Article 32.2 CMR/Article 48 § 3 CIM/Article 48 § 3 SMGS). In addition, CIM refers to national law for any suspension or interruption of periods of limitation (Article 48 § 5 CIM), and CMR refers to national law for the extension of the period of limitation (Article 32.3 CMR). With regard to the suspension or extension of the period of limitation in SMGS, there is no reference to national law. Recommendation of the period of limitation is provided for in all three Conventions.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM/UR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>the fresh accrual of rights of action.</p> <p>Jurisdiction clause Art.31.1 In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory: (a) The defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or (b) The place where the goods were taken over by the carrier or the place designated for delivery is situated.</p> <p>Art.31.2 Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgement has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.</p>	<p>IRU GCR, clause 20 and IRU GCRLS, clause 17: cf. to courts of the country, ad hoc court of arbitration, institutional arbitration bodies where available.</p>	<p>Jurisdiction clause Art. 46 § 1 Actions based on these Uniform Rules may be brought before the courts or tribunals of Member States designated by agreement between the parties or before the courts or tribunals of a State on whose territory a) the defendant has his domicile or habitual residence, his principal place of business or the branch or agency which concluded the contract of carriage, or b) the place where the goods were taken over by the carrier or the place designated for delivery is situated. Other courts or tribunals may not be seized.</p>	<p>GTC-CIM, Point 13: In the case of dispute, the parties to the contract shall try to find an amicable solution, they may agree a conciliation, mediation or arbitration process, in particular that provided for in Title V of COTIF, to achieve this.</p>	<p>Article 47 Claims under the contract of carriage. Jurisdiction § 1. An action may be brought only after a claim has been made, and only against the carrier against which the claim was made. The right to bring an action under this Agreement shall belong to the person who has the right to make a claim against the carrier. § 2. The right to make a claim and bring an action shall arise: 1) for compensation for shortage of or damage to (spoilage of) goods, and for exceeding the goods delivery period – from the day on which the goods are delivered to the consignee; 2) for compensation for loss of goods – from the 30th day upon expiry of the delivery period; 3) for refund of overpayments of carriage charges – from the day on which the carriage charges were paid; 4) for other claims – from the day when the circumstances constituting grounds for making the claims arose. § 3. An action may be brought: 1) if the carrier has not responded to a claim within the period prescribed for consideration of the claim; 2) if, within the period prescribed for consideration</p>	<p>The CIM and CMR Conventions allow for the possibility of a jurisdiction clause. The parties are only allowed to choose the overall jurisdiction of the courts of a Member State and not the jurisdiction of a specific court within that state. It is for the national law to identify the specific court in that Member State. In contrast, SMGS provides that an action shall be brought in a competent court at the respondent's location. Thus, SMGS does not allow the parties to the contract to agree to choose the general jurisdiction.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM UR	DOCUMENTS CIT	SMGS	COMMENTS
Servants and agents liability	<p>Art.29.1 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 his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct.</p> <p>Art.29.2 The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment.</p> <p>Furthermore, in such a case such agents, servants or other persons shall not be entitled to avail themselves, with regard to their personal liability, of the provisions of this chapter referred to in paragraph1.</p>	<p>IRU General Conditions, clause 2 agents and servants.</p>	<p>Art. 40 The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The managers of the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.</p>		<p>of a claim, the carrier has notified the claimant of complete or partial rejection of the claim. § 4. Action shall be brought in a competent court at the respondent's location.</p> <p>Article 38 Persons for whose actions the parties to the contract of carriage shall be liable § 1. The parties to a contract of carriage shall be liable for the actions of their staff members and any other persons whose services they use to execute a contract of carriage, when these staff members or other persons are performing their duties. § 2. The railway infrastructure manager¹⁵ shall be considered to be a person whose services are used by a carrier to execute a contract of carriage.</p>	<p><i>In CIM, SMGS and CMR, carriers are liable for their servants and agents. But SMGS not only makes the carrier liable for his servants and agents but extends that liability to all parties to a contract of carriage.</i></p> <p><i>All three Conventions specify that such liability refers to cases where the carrier uses those persons for the performance of the carriage when those servants and other persons are acting within the scope of their functions/employment/duties.</i></p> <p><i>Article 40 sentence 2 CIM and Article 38 § 2 SMGS make it clear that managers of railway infrastructure on which carriage is performed are considered, ex lege, to be persons according to Article 40 sentence 1 CIM/Article 38 § 1 SMGS.</i></p>

¹⁵ According to Art.2 SMGS "Infrastructure Manager" means a person who renders services to carriers relating to the use of infrastructure.

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
<p>Successive carriers</p>	<p>Art.34 If carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of his acceptance of the goods and the consignment note. Art. 36 Except in the case of a counterclaim or a setoff raised in an action concerning a claim based on the same contract of carriage, legal proceedings in respect of liability for loss, damage or delay may only be brought against the first carrier, the last carrier or the carrier who was performing that portion of the carriage during which the event causing the loss, damage or delay occurred (...) Cumulative actions: Art. 36 in fine (...) an action may be brought at the same time against several of these carriers. Recover of compensation Art. 37 A carrier who has paid</p>		<p>Art. 26 If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the goods with the consignment note, shall become a party to the contract of carriage in accordance with the terms of that document and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible in respect of carriage over the entire route up to delivery. Art. 27 Where the carrier has entrusted the performance of the carriage to a substitute carrier¹⁶, the carrier shall nevertheless remain liable in respect of the entire carriage.</p>		<p>Art. 14 Contract of carriage § 5. Each successive carrier¹⁷, by taking over the goods for carriage, together with the consignment note, thereby accedes to this contract of carriage and shall assume the obligations arising therefrom.</p>	<p>All three Conventions establish the liability of successive carriers based on the principle of common liability, although there are some differences in the manner in which such liability is assigned to each of the carriers. It is important to note that there is no substitute carrier under SMGS.</p>

¹⁶ According to Art.3 lit. b) CIM “substitute carrier” means a carrier, who has not concluded the contract of carriage with the consignor, but to whom the carrier referred to in letter a) has entrusted, in whole or in part, the performance of the carriage by rail.

¹⁷ According to Art.2 SMGS “successive carrier” means a carrier which, acceding to the contract of carriage (concluded by a contractual carrier), accepts the goods from the contractual carrier or other successive carrier for their further transportation.

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIM UR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>compensation in compliance with the provisions of this Convention, shall be entitled to recover such compensation, together with interest thereon and all costs and expenses incurred by reason of the claim, from the other carriers who have taken part in the carriage, subject to the following provisions:</p> <p>(a) The carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier;</p> <p>(b) When the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him;</p> <p>(c) 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 the carriers as laid down in (b) above.</p>					
<p>Mandatory law</p>	<p>Art. 40 Carriers shall be free to agree among themselves on provisions other than those laid down in Articles 37 and 38.</p> <p>Art.41 1. Subject to the provisions of article 40, any stipulation</p>		<p>Art.5 Unless provided otherwise in these Uniform Rules, any stipulation which, directly or indirectly, would derogate from these Uniform Rules shall be null and void. The nullity of such a stipulation</p>		<p>Article 6 Imperative law Any condition of a contract of carriage directly or indirectly contravening the conditions laid down in this Agreement shall be null and void and of no legal force, except as expressly</p>	<p>The provisions of all three Conventions cannot be derogated from.</p> <p>Article 6 SMGS stipulates the same mandatory provision based on Article 5 CIM, but the carrier cannot assume greater liability.</p>

Regime	CMR CONVENTION	DOCUMENTS IRU	COTIF CIMUR	DOCUMENTS CIT	SMGS	COMMENTS
	<p>which would directly or indirectly derogate from the provisions of this Convention shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.</p> <p>2. In particular, a benefit of insurance in favour of the carrier or any other similar clause, or any clause shifting the burden of proof shall be null and void.</p>		<p>shall not involve the nullity of the other provisions of the contract of carriage. Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in these Uniform Rules.</p>		<p>provided in this Agreement. The nullity of such conditions shall not entail the nullity of other terms of the contract of carriage.</p>	<p>There is no such mandatory provision in CMR.</p> <p>Under CIM, in contrast to CMR and SMGS, the carrier may assume a liability greater and obligations more burdensome than those provided in CIM (Article 5 in fine).</p>
<p>Right of recourse</p>	<p>Right of recourse Art. 37 A carrier who has paid compensation in compliance with the provisions of this Convention, shall be entitled to recover such compensation, together with interest thereon and all costs and expenses incurred by reason of the claim, from the other carriers who have taken part in the carriage, subject to the following provisions: (a) The carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier; (b) When the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him; (c) If it cannot be</p>	<p>Art. 50 § 1. A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions: a) the carrier who has caused the loss or damage shall be solely liable for it; b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c); c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.</p>	<p>Art. 50 § 1. A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions: a) the carrier who has caused the loss or damage shall be solely liable for it; b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c); c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.</p>	<p>AIM, Point 1.1: This agreement, based on CIM Article 49 et seq., governs the relationships between carriers, and in particular how irrecoverable charges and compensation paid out are to be shared between them. Point 1.2.1: This agreement applies to all carriage performed in accordance with the CIM between several successive carriers where those carriers have declared that they are prepared to apply this agreement or are members of the CIT and have not made a general reserve against its application or withdrawn from it in accordance with point 1.10.</p>	<p>Article 36 Claims between carriers for recovery of amounts of compensation paid § 1. A carrier who, in the cases provided for in this Agreement, has paid compensation to a consignor or a consignee in accordance with these Agreement, shall have a right of recourse against other carriers involved in the carriage, in accordance with the following provisions: 1) if the loss or damage has been caused due to the fault of one carrier, that carrier shall have sole liability for it; 2) if the loss or damage has been caused due to the fault of several carriers involved in the carriage, each carrier shall be liable only for the portion of the loss or damage it has caused; 3) if it cannot be proved that the loss or damage was caused due to the fault of one or more carriers, the carriers shall agree a procedure for the apportionment of liability. If the carriers cannot reach</p>	<p>The three Conventions also allow the right of recourse; the provisions in CIM, SMGS and CMR are similar.</p>

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<p>ascertained to which carriers liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers as laid down in (b) above.</p> <p>Art. 38 If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them</p> <p>Art. 39 - Procedure for recourse</p> <p>1. No carrier against whom a claim is made under articles 37 and 38 shall be entitled to dispute the validity of the payment made by the carrier making the claim if the amount of the compensation was determined by judicial authority after the first mentioned carrier had been given due notice of the proceedings and afforded an opportunity of entering an appearance.</p> <p>2. A carrier wishing to take proceedings to enforce his right of recovery may make his claim before the competent court or tribunal of the country in which one of the carriers concerned is ordinarily resident, or has his principal place of business or the branch or agency through which the contract of carriage was made. All the carriers concerned may be made defendants in the same</p>		<p>§ 2. In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.</p> <p>Art. 51 § 1. The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 50 may not be disputed by the carrier against whom the right of recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seized of the principal action shall determine what time shall be allowed for such notification of the proceedings and for intervention in the proceedings.</p> <p>§ 2. A carrier exercising his right of recourse must make his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing which he shall lose his right of recourse in the case of those against whom he has not taken proceedings.</p> <p>§ 3. The court or tribunal must give its decision in one and the same judgment on</p>		<p>agreement on a procedure for the apportionment of liability, liability shall be apportioned among them in proportion to the tariff kilometres travelled by the consignment when carried by each of the carriers except those which prove that the loss or damage did not arise through any fault of theirs.</p> <p>§ 2. When recovering amounts of compensation for exceeding the goods delivery period, if the goods delivery period was exceeded either on several railways or on railways and a waterway section of the route, the percentage for calculating the compensation shall be determined in accordance with § 2 of Article 45</p> <p>'Amount of compensation for exceeding the goods delivery period' based on the total exceedance of the delivery period for the whole of the route, and shall be applied to the carriage charge received by each of the carriers who allowed the delivery period to be exceeded.</p> <p>§ 3. A carrier with whom a claim for recovery of compensation paid is lodged shall not be entitled to contest the validity of the compensation payment by the carrier lodging the claim if the compensation was determined by a court decision and if the carrier against whom the claim is made was notified in good</p>		

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	<p>action.</p> <p>3. The provisions of article 31, paragraphs 3 and 4, shall apply to judgements entered in the proceedings referred to in articles 37 and 38.</p> <p>4. The provisions of article 32 shall apply to claims between carriers. The period of limitation shall, however, begin to run either on the date of the final judicial decision fixing the amount of compensation payable under the provisions of this Convention, or, if there is no such judicial decision, from the actual date of payment.</p>		<p>all recourse claims brought before it.</p> <p>§ 4. The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business, or the branch or agency which concluded the contract of carriage.</p> <p>§ 5. When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings from among those having competence pursuant to § 4.</p> <p>§ 6. Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.</p>		<p>time of the consideration of the case by a court.</p> <p>§ 4. A claim for recovery of compensation paid under a claim for compensation shall be lodged within 75 days of the date of the actual payment of the amount payable under the claim.</p> <p>A claim for compensation determined by a court decision shall be lodged within 75 days of the entry into force of that decision.</p>	
<p>Agreements concerning recourse</p>	<p>Art. 40</p> <p>Carriers shall be free to agree among themselves on provisions other than those laid down in articles 37 and 38.</p>		<p>Art. 52</p> <p>The carriers may conclude agreements which derogate from Articles 49 and 50.</p>			<p><i>CIM offers the possibility for relations between carriers to be dealt with in terms of allocation of compensation and the right of recourse. This therefore constitutes an opening clause of Article 49- Article 50 CIM.</i></p> <p><i>The self-contained regime applicable to CIT members is found in the document entitled "Agreement concerning the Relationship between Carriers in respect of International Freight Traffic by Rail" (AIM).</i></p>

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<p style="text-align: center;">Arbitration</p>	<p>Art.33 The contract of carriage may contain a clause conferring competence on an arbitration tribunal if the clause conferring competence on the tribunal provides that the tribunal shall apply this Convention.</p>		<p>Art. 28 COTIF § 2. Other disputes arising from the interpretation or application of the Convention and of other conventions elaborated by the Organisation in accordance with Article 2 § 2, if not settled amicably or brought before the ordinary courts or tribunals may, by agreement between the parties concerned, be referred to an Arbitration Tribunal. Articles 29 to 32 shall apply to the composition of the Arbitration Tribunal and the arbitration procedure.</p>			<p>Neither CIM nor SMGS offer the possibility to establish an arbitration clause for legal disputes arising from the contract of carriage, as does Article 33 CMR. The parties are however free to agree to submit their dispute to arbitration as a clause in the contract of carriage confers competence to the arbitration tribunal provided that the tribunal applies the Convention. An arbitration clause is specified in Article 28 § 2 COTIF for disputes between Member States and the Organisation arising from the interpretation or application of the Convention or between the parties of the transport contract.</p>
	<p>Art. 22 1. When the sender hands goods of a dangerous nature to the carrier, he shall inform the carrier of the exact nature of the danger and indicate if necessary, precautions to be taken. If this information has not been entered in the consignment note, the burden of proving, by some other means, that the carrier knew the exact nature of the danger constituted by the carriage of the said goods shall rest upon the sender or the consignee. 2. Goods of a dangerous nature which, in the circumstance referred to in paragraph 1 of this article, the carrier did not know were dangerous, may, at any</p>		<p>Art. 9 If the consignor has failed to make the entries prescribed by RID, the carrier may at any time unload or destroy the goods or render them innocuous, as the circumstances may require, without payment of compensation, save when he was aware of their dangerous nature on taking them over.</p>		<p>Article 9 Rules for the transport of dangerous goods. § 1. The carriage of dangerous goods shall be governed by the Rules for the transport of dangerous goods (See Annex 2 to this Agreement). The relevant articles of this Agreement and Rules for the transport of dangerous goods mentioned in Article 8 “Rules governing the carriage of goods” of this Agreement shall apply to any other area, which is not governed by Rules for the transport of dangerous goods. § 2. The carriage of dangerous goods in international through railway-ferry traffic shall be also governed by the terms</p>	<p>Comparable provisions in CMR, CIM and SMGS. With regard to the examples of Article 22, paragraph 2 of the CMR and Article 13 of the Hamburg Rules, this article stipulates the consequences in transport law if the consignor has omitted the entries prescribed by RID for international carriage of dangerous goods by rail.</p>
<p style="text-align: center;">Dangerous goods</p>						

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	<p>time or place, be unloaded, destroyed or rendered harmless by the carrier without compensation; further, the sender shall be liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.</p>				<p>of the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN).</p>	

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