



Guideline comparing the legal regimes

COTIF/CIM – CMNI-CLNI-ATHEN CONVENTION

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Introduction

Inland waterway transport is becoming increasingly important for business reasons – the rising volume of goods transported and bottlenecks on the other modes of transport are making it imperative to use. Measures to modernise the fleets will reduce emissions of pollutants CO₂, noise and greenhouse gases, so that inland waterway navigation will also have very strong environmentally friendly macroeconomic impact in its favor. Inland waterways are being promoted pro-active on the interface to rail freight carriage at national and European political level drawing up a Masterplans. For example, Germany drew up a Masterplan Binnenschifffahrt (Masterplan for inland waterway navigation) in 2019, to ensure sustainable support for this sector.

Beyond this, inland waterway transport has hardly been neglected in legal terms from the prospective of a multimodal carriage of goods, particularly in comparison to international rail freight law in the framework of COTIF. Taking the very successful CIT CMR-COTIF/CIM-SMGS Guideline as its starting point, the CIT General Secretariat thus drafted this Guideline on international railway freight and inland waterway law, comparing and mirroring the single body of law governing the carriage of freight by rail COTIF/CIM with the law governing inland waterways in particular CMNI, CLNI and the Athens Convention. The Athens Convention is interesting in this context as well, since it considers the carriage of registered luggage to be a freight movement and contains principles governing liability and limitations thereon accordingly.

The CIT Guideline contains in **Part I** a matrix indicating which states apply each of the various legal regimes supporting a map displaying the respective areas of application. These has been supplemented by an Executive summary highlighting the key legal findings. The **Part II** contents extensive comparative table with all applicable provisions with legal commentaries for better understanding of the systematic of the international rail transport and inland waterways law. This Guideline gives the CIT shipping companies members in its multimodal framework a good legal basis for increased cooperation with the rail carriers members on the base of a through contract for carriage of goods in accordance with Article 1 §§ 3/4 CIM.

The Guideline will be promoted in cooperation with the International Association for the representation of the mutual interests of the inland shipping and the insurance and for keeping the register of inland vessels in Europe (IVR) and the Central Commission for Navigation of the Rhine (CCNR).

We would like to thank all CIT members and participants to the CIT Multimodality Working Group and Multimodality Committee chaired in a very confident and wise manner by Maria Kalimeri from ATTICA. We are particularly thankful for the publication of the Guideline to Martino Limoncello for his dedicated support.

The CIT General Secretariat will publish the Guideline on the new CIT website under the heading "Multimodality": <https://www.cit-rail.org/en/multimodality/products>.

We look forward to a lively use of the Guideline and remain at your disposal for an interactive discussion.

Berne, February 2022

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Part I

Main Principles underlying the COTIF/CIM – CMNI – CLNI and Athens Convention legal regimes

- **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.
- **CMNI** – refers to the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) of 22 June 2001, in force since 2 July 1961.
- **CLNI 2012** – refers to the Strasbourg Convention of 2012 on the Limitation of Liability in Inland Navigation (CLNI 2012) of 4 November 1988, completely revised on 27 September 2012. Now that four States (Germany, Luxembourg, the Netherlands and Serbia) have entered into force and three States (Germany, Luxembourg and the Netherlands) have terminated CLNI 1988 with effect from 1 July 2019, CLNI 2012 entered into force on 1 July 2019.
- **Athens Convention** – refers to the Convention relating to the carriage of passengers and their luggage by sea of 12 December 1974, in force since 28 April 1987.

I. Scope of application

1. The COTIF/CIM and CMNI shall apply to every contract of carriage of goods by **rail** (COTIF/CIM) or by **inland waters** in vessels (CMNI) 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 based on Article 2 § 1 CMNI. 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, Article 1 § 2 COTIF/CIM.

The Nationality, place of registration/of residence of the vessel or the parties to the contract are irrelevant for the applicability of the COTIF/CIM, Article 1 § 1 in fine and CMNI, Article 1 § 1. The CLNI applies as a *lex specialis* to the CMNI with regards to the limitation of liability of the vessel owners and salvors (Article 15 § 1). The 2012 Strasbourg Convention on the Limitation of Liability in Inland Navigation (CLNI 2012) largely corresponds to the 1988 CLNI; in 2007, the Contracting States to the 1988 CLNI decided to initiate a revision of the Convention in order to make it more attractive to other States and, in particular, to make it accessible to States which do not have a direct navigable link to the Rhine or Moselle and to update the maximum liability amounts established twenty years ago.

2. The **mandatory law** nature of the provisions of each Convention differ greatly. While the provisions of the COTIF/CIM cannot be derogated from, with the exception that the carrier may assume a liability greater and obligations more burdensome (Article 5 in fine CIM), only the CMNI's provisions on the carrier's liability, burden of proof and limitation periods are mandatory.
3. **Multimodal transport** is treated in a completely different way in the COTIF/CIM and CMNI Conventions. The COTIF/CIM applies to inland waterways transport, where international carriage includes carriage by inland waters in the **internal traffic** of a Member State as a supplement to trans-frontier carriage by rail (the "**rail+**" approach) – this is to say that the principal subject of a single contract of carriage has to be carriage by rail. In addition, CIM also applies to **transfrontier** carriage by inland waterway as a supplement to carriage by rail, if the carriage by inland waterway is performed on services included in the OTIF list of Maritime and Inland Waterway Services¹. On the other hand, the CMNI does not cover multimodal transport and is only applicable to the transport of goods by inland waters besides if the purpose of the contract of carriage of goods is without transshipment both on inland waterways and to waters to which maritime regulations apply and a maritime bill of lading has been issued in accordance with the maritime law applicable, or the distance to be travelled in waters to which maritime regulations apply is the greater, Article 2 § 2 lit. (a) and (b) CMNI.

II. Contractual relations

1. Overall, the definition of the "contract of carriage" that can be found in the CMNI and CIM resemble each other as both conventions require a compensation (reward/ payment of freight) as a remuneration of the service provided for the carriage of goods by rail. In contrast to CIM, CMNI provides the opportunity to derogate from this principle and to carry the goods free of charge.
2. The consignee's right to dispose of the goods is different, however: the principle is inverted. As an applicable rule under the CMNI, the shipper's right of disposal shifts to the consignee when the goods have arrived at the scheduled place of delivery. However, if the carriage is made under a consignment note, the consignee only acquires the right of disposal if the original document has been handed to him. If the transport document is a bill of lading, the consignee's right to give instruction to the carrier requires that the shipper has passed on all originals of the bill of lading to a third party and is not anymore in possession of any of the original bills of lading.

¹ According to Article 24 of COTIF, Member States of the OTIF may enter shipping lines in the lists of maritime and inland waterway services. This makes it possible for railway undertakings and shipping companies to perform multimodal rail-sea transport under the CIM UR.

According to the COTIF/CIM, it is the consignee who has this right unless the consignor has included an indication to the contrary on the consignment note (Article 18 § 3 in connection with Article 18 § 2 lit. d).

3. **Rights and obligations of the carrier and the shipper:** regarding the carriers' obligations, the principles in the COTIF/CIM and CMNI are comparable but differ on the responsibility for the loading/ unloading of the goods. For both regimes, the parties can contractually determine who is to assume these obligations, but in the absence of such an agreement, the Conventions establish different rules. Under the COTIF/CIM, loading and unloading is the responsibility of the carrier in respect of packages, whereas for loading the consignor and for unloading the consignee are responsible in the case of wagon loads. Under the CMNI, however, the loading and discharging of the goods are in the entire responsibility of the shipper, and if the carrier takes on the task, he is not entitled to carry the goods on deck. The CMNI provisions do not address the issue of the unloading of the goods, leaving it the contractual freedom of the parties.

According to both the COTIF/CIM and CMNI, the carrier must hand over the original consignment note and deliver the goods to the consignee at the place of delivery/port of discharge.

III. Documentary requirements

1. The COTIF/CIM and CMNI Conventions do not apply the same documentation requirements. According to Article 7 § 1 CIM, the consignment note must contain all the particulars listed therein. To the contrary, Article 11 § 5 CMNI does not require that the transport document contain all the particulars of its catalogue. However, the carrier, who is responsible for issuing a transport document if the contract of carriage so provides, is bound to include the particulars furnished by the shipper as to the dimensions, number of weight and the identification marks of the goods. But this duty only arises if and insofar as the shipper has provided such particulars in writing. In return for this obligation, the carrier may enter reservations in respect of these particulars.
2. Both in the COTIF/CIM and CMNI Conventions, the consignment note and the transport document is an evidence of the contract, but not a *conditio sine qua non* for the contract of carriage. The CMNI allows for the use of a consignment note or a bill of lading, as long as it can be evidence for the existence of a contract of carriage. As soon as a bill of lading is used, the Athens Convention is no longer applicable for the carriage of luggage on a board of vessel as good [Article 1 point 5 lit a)].
3. In the COTIF/CIM, the electronic consignment note is a functional equivalent of the paper version and this is provided *expressis verbis* in Article 6 § 9 COTIF/CIM. In the CMNI, however, the electronic transport document is based on the definition in Article 1 § 8 and derived from Article 11 § 2: The use of the electronic transport document under CMNI is not expressly mentioned but Art. 11 § 2 sentence 3 CMNI confirms that the signature of the carrier may be made by electronic means. This leads to the conclusion that the transport document (consignment note or bill of lading) may be issued also in electronic format. The use of an electronic transport document according to CMNI must be positively allowed by the laws of the State applicable to the contract of carriage in inland waters.

IV. Provisions concerning liability

1. The COTIF/CIM and the CMNI both contain the principle of the carrier's strict liability (obligation of result).
2. The COTIF/CIM and CMNI 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 23 § 2 CIM and Article 16 § 2 CMNI): the carrier must 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 23 § 3 COTIF/CIM and Article 18 § 1 CMNI (exemptions/exonerations from liability), special privileges are granted to carriers for the **specific risks** of railway or inland waterways transport. If the carrier succeeds in proving that the damage/loss could have been caused by one or more of these specific risks, 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 25 § 2 COTIF/CIM and Article 18 CMNI). Under the COTIF/CIM and CMNI the provisions regarding the parties' liability are mandatory. However, Article 25 § 2 CMNI and Article 38 COTIF/CIM previewed several exemptions from the liability which in the case of CMNI can be contractually stipulated, namely the error in navigation, fire or explosion and defects of the vessel.
4. The COTIF/CIM limits the liability for delays in delivery to four times the amount of freight charges. Under the CMNI regime however, the limitation amount in relation to the carrier's liability for delay in delivery is limited to the amount of the freight.
5. 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 both the COTIF/CIM and the CMNI, with specific provisions.
6. Under the COTIF/CIM, the substitute carrier has no contractual relationship with either the consignor or the consignee (Article 3 lit. b CIM) but the provisions on liability also apply to him for his part of the carriage performed. Whereas under the CMNI regime, a sub-contract of carriage made by the carrier and an actual carrier is a contract of carriage for the purpose of the CMNI. Thus, all provisions governing the carrier's liability also apply to the actual carrier, based on the principle of common liability, although there are some differences in its assignment (Article 4 CMNI).
7. In the CIM and the CMNI, carriers are liable for their servants and agents (Article 40 CIM and Article 17 CMNI). Both 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 and employment with the carrier.

V. Compensation

1. Both the COTIF/CIM and the CMNI Conventions specify how compensation should be calculated: according to the value of the goods. The COTIF/CIM and the CMNI foresee a limit to compensation. However, the limits of compensation are different: under the CIM, the compensation is set at SDR² 17 per missing kilogram of gross mass (Article 30 § 2 CIM). The CMNI limits the compensation to 666.67 SDR/package or 2 SDR/kg, whichever is the higher. In addition, Article 27 CMNI clarifies that the rights and duties may arise from international conventions regarding limitation of compensation, i.e. the CLNI. The CLNI 2012 provides in addition the general limits for personal injury (400'000 SDR) and property (20'000 SDR). Different limits apply depending on the type of vessel. In practice, the limitation of maximum compensation only has an effect if the carriage is not in gross mass, but the value of the goods carried exceeds the limits of compensation provided for in the CIM/CMNI.
2. However, if the damage was caused by the qualified fault of the carrier, the limitation of liability no longer applies and the carrier is exposed to unlimited liability: Regarding this loss of the right to limit responsibility, both the COTIF/CIM and the CMNI/CLNI apply the same principles. The COTIF/CIM establishes, *ex lege*, the loss of the

² SDR = Special Drawing Rights

right to invoke the limits of liability (Article 36 CIM). The limit for liability does not apply in the case of gross misconduct by the carrier as of intentional recklessness, wilful acts by the carrier or his auxiliaries. The same applies with Article 21 CMNI and Article 13 CLNI, both for the carrier and their servants or agents.

VI. Procedural provisions

1. The COTIF/CIM (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. The COTIF/CIM allows the period of limitation may be suspended by a written claim. No provision for claims is provided in the CMNI.
2. The COTIF/CIM and the CMNI establish a basic limitation of one year. The COTIF/CIM extends this period to two years, although it can grant this extension in more situations. Under the CMNI regime, a person held responsible may turn to the recourse debtor to pass on liability (e.g. head/contractual-carrier vs sub-carrier). Recourse claims must be instituted within a period of 90 days, commencing on the day on which the person bringing the recourse claim has settled the principal claim. The CIM specifically regulates the procedure of recourse between the different carriers but the carriers may conclude agreements which derogate from these rules (Article 52 CIM).

The legal consequences for future legal action, arising from the time limitations in the COTIF/CIM and CMNI, are based on national law.

3. An arbitration clause is provided 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). No arbitration clause is provided in the CMNI.

Part II

Comparative Matrix COTIF/CIM; CMNI; CLNI (2012); Athens Convention (incl. the 2002 Protocol)

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <i><u>Athens Convention including the 2002 Protocol</u></i>	COMMENTS
Date	9 May 1980 - 3 June 1999 (Protocol)	1 April 2005	27 September 2012 13 December 1974 including the Protocol of 1 November 2002	
Mode	Rail	Inland Waterway	Inland Waterway and Maritime	
Scope of application of the Conventions	<p><u>Art. 1 § 1</u> 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><u>Art. 1 § 2</u> 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</p>	<p><u>Art. 2 § 1</u> This Convention is applicable to any contract of carriage according to which the port of loading or the place of taking over of the goods and the port of discharge or the place of delivery of the goods are located in two different States of which at least one is a State Party to this Convention. If the contract stipulates a choice of several ports of discharge or places of delivery, the port of discharge or the place of delivery to which the goods have actually been delivered shall determine the choice.</p>	<p>CLNI 2012 The States Parties to this Convention, having recognised the desirability of determining by agreement certain uniform rules relating to the limitation of liability in inland navigation on all inland waterways, considering that it is desirable to modernise the 1988 Strasbourg Convention on the Limitation of Liability in Inland Navigation.</p> <p><u>Art. 15 § 1</u> This Convention shall apply to the limitation of liability of the vessel owner or a salvor at the time of the</p>	<p><i>CIM are Uniform Rules to the Convention concerning International Carriage by Rail (COTIF) applying to every contract of carriage of goods by rail.</i></p> <p><i>CIM generally applies 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 of COTIF/CIM.</i></p> <p><i>The CMNI as an international Convention applies to any contract of carriage by inland waters</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p>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 or more infrastructure managers subject to only one of those States.</p>	<p>Art. 2 § 2 This Convention is applicable if the purpose of the contract of carriage is the carriage of goods, without transshipment, both on inland waterways and in waters to which maritime regulations apply, under the conditions set out in paragraph 1, unless: (a) a maritime bill of lading has been issued in accordance with the maritime law applicable, or (b) the distance to be travelled in waters to which maritime regulations apply is the greater.</p> <p>Art. 2 § 3 This Convention is applicable regardless of the nationality, place of registration or home port of the vessel or whether the vessel is a maritime or inland navigation vessel and regardless of the nationality, domicile, registered office or place of residence of the carrier, the shipper or the consignee.</p> <p>Art. 31 Each State may, at the time of the signature of this Convention, of its ratification, its approval, its</p>	<p>incident giving rise to the claims where: (a) the vessel was being operated on a waterway located on the territory of a State Party, (b) salvage or assistance services had been rendered along one of the said waterways to a vessel in danger or to the cargo of such a vessel, or (c) a vessel sunk, wrecked, stranded or abandoned along one of the said waterways or the cargo of such a vessel had been raised, removed, destroyed or rendered harmless. This Convention shall also apply to the limitation of liability of a salvor rendering salvage or assistance services from an inland navigation vessel to a sea-going vessel in danger along one of the said waterways or in respect of the cargo of such a vessel.</p>	<p><i>according to which the place (whether a “port” or not) of loading/taking over and the place of discharge/delivery are in two different Member States.</i></p> <p>CMNI as well as CIM both apply if only one country is a Member State of the Convention (COTIF) but in contradiction to CMNI, the CIM UR are only applicable if the parties to the contract agree that it shall be subject to the CIM Uniform Rules (Art. 1 § 2 CIM).</p> <p><i>Decisive for the application of the CMNI as well as for the CIM are the agreements made in the contract of carriage / transport document regarding the place of taking over of the goods (the port loading) and the port of discharge or the place of delivery of the goods. It does not matter if the carriage is performed differently. In case of an agreed cross-border transportation, the CMNI and CIM remain applicable even if the carriage in fact ends before the vessel or railway has crossed the national border.</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
		<p>acceptance, its accession thereto or at any time thereafter, declare that it will also apply this Convention:</p> <p>(a) to contracts of carriage according to which the port of loading or the place of taking over and the port of discharge or the place of delivery are located in its own territory;</p> <p>(b) by derogation from article 1, paragraph 1, to carriage free of charge.</p>		<p><i>Nationality, place of registration/of residence, of the parties are irrelevant for the applicability of the CMNI as well as the CIM. Regarding the applicability of the convention, CMNI explicitly mentions the irrelevance of origin of the vessel. This clarification is due to the importance of the nationality of the vessel under which the national law applicable to the vessel is determined.</i></p> <p><i>In contradiction to CIM, CMNI explicitly mentions the possibility of every State to apply the Convention to carriages free of charge (Art. 31 (b)).</i></p> <p><i>The CLNI applies as a <i>lex specialis</i> to the CMNI to limit the liability of the vessel owners and salvors.</i></p>
Member States, which are contracting parties to the Conventions	See Summary of the scope of Application	See Summary of the scope of Application	See Summary of the scope of Application	<i>Both CIM and CMNI also apply if only one country is a Member State.</i>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
<p>Application to other modes of carriage</p>	<p>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.</p> <p>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.</p>	<p>Art. 2 § 2 This Convention is applicable if the purpose of the contract of carriage is the carriage of goods, without transshipment, both on inland waterways and in waters to which <u>maritime regulations</u> apply, under the conditions set out in paragraph 1, unless: (a) a maritime bill of lading has been issued in accordance with the maritime law applicable, or (b) the distance to be travelled in waters to which maritime regulations apply is the greater.</p>		<p><i>CIM applies to inland waterway carriages, where international carriage includes carriage by inland waterways in the internal traffic of a Member State only as a supplement to transfrontier carriage by rail (so called "rail+" approach). This means that the principal subject of a single contract of carriage has to be carriage by rail with a broader application to the other transport modes.</i></p> <p><i>In addition, CIM also applies to transfrontier carriage by inland waterway as a supplement to carriage by rail, if the carriage by inland waterway is performed on services included in the OTIF list of Maritime and Inland Waterway Services. In this case, the COTIF/CIM is applicable to the entire transportation of the goods, including the part of the transport through inland waterways, based on a single true contract under the railways law, from taking over of the goods up to the point of delivery (Article 24 § 1 COTIF in connection with Article 1 § 4 CIM).</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
				<p><i>On the other hand, the CMNI does not cover multimodal transport and is only applicable to the transport of goods by inland waters besides if the purpose of the contract of carriage of goods is without transshipment both on inland waterways and to waters to which maritime regulations apply and a maritime bill of lading has been issued in accordance with the maritime law applicable, or the distance to be travelled in waters to which maritime regulations apply is the greater, Article 2 § 2 lit. (a) and (b) CMNI.</i></p> <p><i>CIM has – in contradiction to CMNI - a broad multimodal approach applicable to international maritime and inland waterway services as well as road transportation.</i></p> <p><i>CMNI is meant to bring no more than sea carriage within the CMNI`s reach, and this only if the sea carriage conforms to a set of strict conditions (see Article 2 § 2 CMNI).</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012) Athens Convention including the 2002 Protocol</u>	COMMENTS
Mandatory law	<p>Art. 5 CIM 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 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>Art. 25 § 1 Any contractual stipulation intended to exclude or to limit or, subject to the provisions of article 20, paragraph 4, to increase the liability, within the meaning of this Convention, of the carrier, the actual carrier or their servants or agents, to shift the burden of proof or to reduce the periods for claims or limitations referred to in articles 23 and 24 shall be null and void. Any stipulation assigning a benefit of insurance of the goods in favour of the carrier is also null and void.</p>		<p><i>The provisions of CIM cannot be derogated from.</i></p> <p><i>Under CIM, the carrier may assume a liability greater and obligations more burdensome than those provided in CIM (Article 5 in fine).</i></p> <p><i>CMNI provisions on the carrier's liability, burden of proof and limitation periods are mandatory, except under limited special contractual circumstances. Thus, mandatory provisions of the CMNI are case-by-case in Art. 4, 16 et seq, 17 § 3, 23 and 24.</i></p>
Contract of carriage	<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. 6 § 2 The contract of carriage must be confirmed by a consignment note</p>	<p>Art. 1 § 1 "Contract of carriage" means any contract, of any kind, whereby a carrier undertakes against payment of freight to carry goods by inland waterway</p> <p>Art. 2 § 2 This Convention is applicable if the purpose of the contract of carriage is the carriage of goods, without transshipment, both on inland waterways and in waters to which</p>		<p><i>CIM are the Uniform Rules applying to every contract of international carriage of goods by rail and constitute Annex B to the Convention concerning International Carriage by Rail (COTIF). CIM UR do not apply to other types of contract relating to the carriage of goods, such as, for example, transport commission contracts, charter contracts, the hiring of means of transport, etc. CIM UR do not apply when the infrastructure of</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p>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.</p> <p><u>Art. 12 § 1</u> The consignment note shall 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><u>Art. 8 § 2 COTIF</u> In the absence of provisions in the Convention, national law shall apply.</p> <p><u>Art. 8 § 3</u> “National law” means the law of the State in which the person entitled asserts his rights, including the rules relating to conflict of laws.</p>	<p>maritime regulations apply, under the conditions set out in paragraph 1, unless:</p> <p>(a) a maritime bill of lading has been issued in accordance with the maritime law applicable, or</p> <p>(b) the distance to be travelled in waters to which maritime regulations apply is the greater.</p> <p><u>Art. 2 § 3</u> This Convention is applicable regardless of the nationality, place of registration or home port of the vessel or whether the vessel is a maritime or inland navigation vessel and regardless of the nationality, domicile, registered office or place of residence of the carrier, the shipper or the consignee.</p> <p><u>Art. 11 § 3</u> The transport document shall be prima facie evidence, save proof to the contrary, of the conclusion and content of the contract of carriage and of the taking over of the goods by the carrier. In particular, it shall provide a basis for the presumption that the goods have been taken over for carriage as they are described in the transport document.</p>		<p><i>stations in neighbouring states is managed by one or more infrastructure managers subject to only one of those States.</i></p> <p><i>The contract of carriage under CIM is concluded by mutual consent of the parties to the contract – consignor and carrier, who under normal circumstances also sign the consignment note (Article 6 § 3 CIM). An implied conclusion of the contract of carriage is also possible. Therefore, the carrier’s obligation to carry the goods in accordance with the contract of carriage arises at a very early stage, even before the goods have been physically handed over for carriage. Liability for non-performance of the carriage is actually based on the applicable national law, since, in accordance with the CIM UR, the carrier is regarded as being liable only “between the time of taking over of the goods and the time of delivery” (Article 23 § 1 CIM). National laws frequently provide no upper limit for the liability – unlike international rail transport law (e.g. 17 SDR – units of account per kilogramme of gross mass short – Article 30 § 2 CIM).</i></p>

Regime	COTIF / CIM	CMNI	CLNI (2012) Athens Convention including the 2002 Protocol	COMMENTS
		<p><u>Art. 29 § 1</u> In cases not provided for in this Convention, the contract of carriage is governed by the law of the State agreed by the Parties.</p> <p><u>Art. 29 § 2</u> In the absence of such agreement, the law of the State with which the contract of carriage is most closely connected is to be applied.</p> <p><u>Art. 29 § 3</u> It is to be presumed that the contract of carriage is most closely connected with the State in which the principal place of business of the carrier is located at the time when the contract was concluded, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State. Where the carrier has no place of business on land and concludes the contract of carriage on board his vessel, it is to be presumed that the contract is most closely connected with the State in</p>		<p><i>CIM UR do not apply to other types of contract relating to the carriage of goods, such as, for example, transport commission contracts, charter contracts, the hiring of means of transport, etc.</i></p> <p><i>In principle, the CMNI “transport document”, can be in the form of a bill of lading, a consignment note or any other document usually used in such business, as long as it can be evidence for the existence of a contract of carriage as well as the loading/taking over of the goods.</i></p> <p><i>However, the carrier, the shipper and the consignee are all entitled to prove that the contract of carriage has not been validly concluded and that the terms of the contract deviate from the contents of the transport documents. The absence of a transport document does not affect the validity of the contract of carriage.</i></p> <p><i>On the whole, the definition of the “contract of carriage” that can be found in the CMNI resembles the definitions found in the CIM as both conventions require a compensation</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
		<p>which the vessel is registered or whose flag it flies, if the port of loading or the place where the goods are taken over, or the port of discharge or the place of delivery or the shipper's principal place of business is also located in that State.</p>		<p><i>(reward/payment of freight) as a remuneration of the service provided for the carriage of goods by rail.</i></p> <p><i>In contrast to CIM, CMNI in Art. 31 provides the opportunity to derogate from this principle and to carry the goods free of charge.</i></p> <p><i>Under the CMNI, if there is no choice of law, the laws of the State in which the principal place of business of the carrier is located or, alternatively, the place of acceptance of the goods by the carrier, apply. When the carrier has no place of business ashore and concludes the contract of carriage on board of his vessel, the contract is deemed most closely connected with the State in which the vessel is registered or whose flag it flies.</i></p> <p><i>When Art. 29 CMNI is of no assistance in determining the applicable law to the contract of carriage, as a default scenario, the law of the State where the scheduled place of delivery of the goods is relevant.</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
<p>Documentary requirements Consignment note / Bill of Lading</p>	<p><u>CIM UR consignment note</u> 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.</p> <p>Art. 6 § 5 The consignment note shall not have effect as a bill of lading.</p>	<p><u>CMNI Transport document</u> Art. 11 § 1 For each carriage of goods governed by this Convention the carrier shall issue a transport document; he shall issue a bill of lading only if the shipper so requests and if it has been so agreed before the goods were loaded or before they were taken over for carriage. The lack of a transport document or the fact that it is incomplete shall not affect the validity of the contract of carriage.</p> <p>Art. 11 § 2 The original of the transport document must be signed by the carrier, the master of the vessel or a person authorized by the carrier. The carrier may require the shipper to countersign the original or a copy. The signature may be in handwriting, printed in facsimile, perforated, stamped, in symbols or made by any other mechanical or electronic means, if this is not prohibited by the law of the State where the transport document was issued.</p>	<p><u>Athens Convention</u> Art. 1 point 5 “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding: (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, (b) live animals.</p>	<p><i>The fact in CIM that one party has not complied with this obligation does not, according to Article 6 § 2 CIM, affect either the existence or the validity of the contract of carriage or the application of the CIM. According to Article 7 § 1 CIM the consignment note must contain these, there mentioned, particulars – that is to say, the parties must include these particulars in the consignment note. However, it does not contain any reservations with regard to the replacement of the signature and to the admissibility, in accordance with national law, of printed signatures or signatures replaced by a seal or a stamp. In the practice is used the unique sending identification number for replacement of the signature especially for the introduction of the electronic consignment note CIM (and electronic wagon note CUV).</i></p> <p><i>The consignment note is evidence of a contract but not condicio sine qua non for the contract of carriage.</i></p> <p><i>For inland waterways carriage under CMNI, it is the carrier that must</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p>Art. 6 § 3 The consignment note shall be signed by the consignor and the carrier. The signature can be replaced by a stamp, by an accounting machine entry or in any other appropriate manner.</p> <p>Art. 6 § 4 The carrier must certify the taking over of the goods on the duplicate of the consignment note in an appropriate manner and return the duplicate to the consignor.</p> <p>Art. 12 § 1 The consignment note shall 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>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;</p>	<p>Art. 11 § 4 When the transport document is a bill of lading, it alone shall determine the relations between the carrier and the consignee. The conditions of the contract of carriage shall continue to determine the relations between carrier and shipper. is concerned.</p> <p>Art. 11 § 5 The transport document, in addition to its denomination, contains the following particulars: (a) the name, domicile, registered office or place of residence of the carrier and of the shipper; (b) the consignee of the goods; (c) the name or number of the vessel, where the goods have been taken on board, or particulars in the transport document stating that the goods have been taken over by the carrier but not yet loaded on the vessel; (d) the port of loading or the place where the goods were taken over and the port of discharge or the place of delivery; (e) the usual name of the type of goods and their method of</p>		<p>issue a transport document. This obligation arises only from the contract of carriage; the carrier and the shipper may agree that no transport document shall be issued. The transport document may be issued in the form of a consignment note or a bill of lading or also of any other document used in trade; (Art. 1 § 6 CMNI). If a specific form is used, it shall be mentioned in the documents. In relation to documents other than bills of lading, the carrier is free to use other words to label the document, including the term “consignment note”.</p> <p>With regards to bills of lading, the CMNI makes a clear distinction between the bill of lading as a self-containing document of title and the independent and separate contract of carriage. The bill of lading determines the relation between the bearer and the carrier, whilst the contract of carriage is concluded between the carrier and the shipper (article 11 § 4 CMNI).</p> <p>As soon as a bill of lading is used, the Athens Convention is not</p>

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	<p>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>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>packaging and, for dangerous or polluting goods, their name according to the requirements in force or, if there is no such name, their general name;</p> <p>(f) the dimensions, number or weight as well as the identification marks of the goods taken on board or taken over for the purpose of carriage;</p> <p>(g) the statement, if applicable, that the goods shall or may be carried on deck or on board open vessels;</p> <p>(h) the agreed provisions concerning freight;</p> <p>(i) in the case of a consignment note, the specification as to whether it is an original or a copy; in the case of a bill of lading, the number of originals;</p> <p>(j) the place and date of issue.</p> <p>The legal character of a transport document in the sense of article 1, paragraph 6, of this Convention is not affected by the absence of one or more of the particulars referred to in this paragraph.</p> <p><u>Art. 12 § 1</u></p>		<p><i>applicable [see Art. 1 point 5 a) Athens Convention].</i></p> <p><i>A signature is only required on the originals of the transport document. It must be signed by the carrier or by the person authorised by the carrier, or by the master of the vessel (if he has not been excluded by the carrier in the contract of carriage). The counter-signature is required by the laws of some States for the transport documents to be valid.</i></p> <p><i>The carrier is bound to include in the transport document the particulars furnished by the shipper as to the dimensions, number of weight and the identification marks of the goods. This duty only arises if and insofar as the shipper has provided such particulars in writing. It is not required that the transport document contains all the particulars listed in the CMNI.</i></p> <p><i>Article 12 § 4 of the CIM constitutes an exception to the evidential value of a consignment note. It is the case, when the consignment note contains a reasoned reservation, e.g. when the carrier does not have</i></p>

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	<p>m) the gross mass or the quantity of the goods expressed in other ways; 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; o) the costs relating to 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.</p> <p>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;</p>	<p>The carrier is entitled to include in the transport document reservations concerning: (a) The dimensions, number or weight of the goods, if he has grounds to suspect that the particulars supplied by the shipper are inaccurate or if he had no reasonable means of checking such particulars, especially because the goods have not been counted, measured or weighed in his presence or because, without explicit agreement, the dimensions or weights have been determined by draught measurement; (b) Identification marks which are not clearly and durably affixed on the goods themselves or, if the goods are packed, on the receptacles or packagings; (c) The apparent condition of the goods.</p> <p>Art. 12 § 2 If the carrier fails to note the apparent condition of the goods or does not enter reservations in that respect, he is deemed to have noted in the transport document that the</p>		<p><i>appropriate means to confirm whether the consignment note reflects the true condition of the consignment. In principle, reservations must be expressed in sufficiently clear terms to enable third parties to be aware of the circumstances justifying the reservation in an individual case.</i></p> <p><i>The purpose of reservations is to balance the presumption that the goods have been taken as they are described in the transport document. The carrier may include reservations relating to the goods and thus limit the scope of the transport document's presumptions.</i></p> <p><i>As the CIM, also the CMNI allows the carrier to include reservations in the respective transport document. The reservation types are specified in Art. 12 § 1 CMNI.</i></p> <p><i>The first type of allowed reservations concerns the dimensions, number or weight of the goods. Reservations may be made only in 3 cases: if the carrier suspects that the particulars supplied by the shipper are inaccurate, if the carrier has no</i></p>

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	<p>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.</p> <p><u>Art. 12 § 1</u> The consignment note shall 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>goods were in apparent good condition.</p> <p><u>Art. 12 § 3</u> If, in accordance with the particulars set out in the transport document, the goods are placed in a container or in the holds of the vessel and sealed by other persons than the carrier, his servants or his agents, and if neither the container nor the seals are damaged or broken when they reach the port of discharge or the place of delivery, it shall be presumed that the loss or damage to the goods did not occur during carriage.</p> <p><u>Art. 13 § 1</u> The originals of a bill of lading shall be documents of title issued in the name of the consignee, to order or to bearer.</p> <p><u>Art. 13 § 2</u> At the place of destination, the goods shall be delivered only in exchange for the original of the bill of lading submitted initially; thereafter, further delivery cannot be claimed against other originals.</p>		<p><i>reasonable means of checking the particulars provided by the shipper and if the dimensions or weight have been determined by official measurements.</i></p> <p><i>In order to make a valid reservation, the carrier must sufficiently indicate the basis of the reservation, i.e. whether he had reason to suspect that the particulars are inaccurate, that he had no reasonable means of checking the particulars or whether an official measurement was carried out. Without such statement, the reservation would be disregarded. In the absence of reservations, the presumptions are rebuttable, and the claimant is entitled to demonstrate that the loss or damage to the goods actually occurred during the transport.</i></p> <p><i>The bill of lading is an independent and conclusive document which embodies the claim against the carrier for delivery of the goods under the CMNI as well as the complementary claims for damages in case of loss of or damage to the goods.</i></p>

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	<p>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>Art. 13 § 3 When the goods are taken over by the carrier, handing over the bill of lading to a person entitled thereby to receive the goods has the same effects as the handing over of the goods as far as the acquisition of rights to the goods is concerned.</p> <p>Art. 13 § 4 If the bill of lading has been transferred to a third party, including the consignee, who has acted in good faith in reliance on the description of the goods therein, proof to the contrary of the presumption set out in article 11, paragraph 3, and article 12, paragraph 2, shall not be admissible.</p>		<p>Art. 13 CMNI distinguishes between 3 types of bills of lading: 1) it may directly include the name of the consignee, who is thus identified as the person authorised to claim under the bill; 2) it may be issued to the order of the consignee named in the bill and 3) it may be issued to bearer, in this case the person entitled to claim under the bill is the party in possession of the bill.</p> <p>Art. 13 § 2 CMNI serves to protect the holder's position under the bill of lading. As long as he has the bill of lading in his possession, claims by other parties for delivery of the goods are excluded. The holder's position is only fully protected if he has all originals in his hands.</p> <p><i>This bill of lading is a transport document and therefore is the basis for the presumptions laid out in Art. 11 § 3 and 12 § 2 CMNI.</i></p> <p><i>In contrast to CMNI, the CIM clearly defines that the transport document - the consignment note - shall not have effect as a bill of lading. CMNI provides the possibility to issue a bill of lading as transport document.</i></p>

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				<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; For practical reasons, however, and also in the interest of increased flexibility, the responsibility for drawing up “uniform model consignment notes” was left to the international carrier’s associations. The most wide-spread example of such a uniform model consignment note is the CIM Consignment Note, prepared by the CIT.³ These associations must come to an agreement with the customers associations and the authorities which are competent in customs matters, including the EU Directorates with responsibility for customs questions (especially DG TAXUD). In this context, however, “agreement” does not mean a formal procedure of approval or acceptance. At the same time, the customs authorities are free at any time to request other or additional standard consignment notes as customs documents.</p>

³ See CIM Consignment Note Manual of the CIT (GLV-CIM).

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				<i>In contrast to CIM, the CMNI does not explicitly mentions the responsibility to establish a uniform model transport document but uniform models of bill of lading exist in practice (exp. FIATA bill of Lading).</i>
Electronic transport document Consignment note	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.	Art. 1 point 8 “In writing” includes, unless otherwise agreed between the parties concerned, the transmission of information by electronic, optical or similar means of communication, including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI), provided the information is accessible so as to be usable for subsequent reference. Art. 11 § 2 (in fine) [...] The signature may be in handwriting, printed in facsimile, perforated, stamped, in symbols or made by any other mechanical or electronic means, if this is not prohibited by the law of the State where the transport document was issued.”		<i>The use of the electronic consignment note under CIM is based on the principle that the electronic consignment note is <u>functional equivalent</u> to the paper version.</i> <i>The use of an electronic transport document under the CMNI is based on the definition in Art. 1 § 8 and derived from Art. 11 § 2. With respect to the law of the State where the transport document was issued, a mere prohibition is not sufficient, but that the relevant law must positively allow electronic transport documents and provide the required regulatory framework for an exchange of electronic documents.</i> <i>In CMNI there is expressively no functional equivalence between</i>

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				<i>paper and electronic transport document (consignment note) is stated as in the CIM but CMNI allows the use of electronic transport documents in accordance with the respective national law.</i>
<p align="center">Rights and obligations of the shipper/consignor or</p>	<p><u>Art. 10 § 1</u> § 1 Unless otherwise agreed between the consignor and the carrier, the costs (the carriage charge, incidental costs, customs duties and other costs incurred from the time of the conclusion of the contract to the time of delivery) shall be paid by the consignor.</p> <p><u>Art. 11 § 3</u> § 3 When the consignor loads the goods, he shall be entitled to require the carrier to examine the condition of the goods and their packaging as well as the accuracy of statements on the consignment note as to the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed. The carrier shall be obliged to proceed with the</p>	<p><u>Art. 6 § 1</u> The shipper⁴ shall be required to pay the amounts due under the contract of carriage.</p> <p><u>Art. 6 § 2</u> The shipper shall furnish the carrier in writing, before the goods are handed over, with the following particulars concerning the goods to be carried: (a) dimensions, number or weight and stowage factor of the goods; (b) marks necessary for identification of the goods; (c) nature, characteristics and properties of the goods; (d) instructions concerning the Customs or administrative regulations applying to the goods;</p>		<p><u>Payment of freight/ costs</u> <i>Under the CMNI, the shipper's duty to pay freight is closely connected to the carrier's duty to carry the goods to the place of delivery. Normally, the amounts due under the contract would be the freight, i.e. the remuneration for the carrier's services. Other amounts, such as expenses made in relation to the goods, an additional remuneration in case of extraordinary services, and other types of charges such as demurrage or similar compensation for any additional use of the vessel.</i></p> <p><i>Under CIM the costs shall be paid by the consignor, unless otherwise agreed.</i></p>

⁴ According to Art. 1 point 4. CMNI "shipper" means any person by whom or in whose name or on whose behalf a contract of carriage has been concluded with a carrier.

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	<p>examination only if he has appropriate means of carrying it out. The carrier may demand the payment of the costs of the examination. The result of the examination shall be entered on the consignment note.</p> <p>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.</p> <p>Art. 14 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>(e) other necessary particulars to be entered in the transport document. The shipper shall also hand over to the carrier, when the goods are handed over, all the required accompanying documents.</p> <p>Art. 6 § 3 If the nature of the goods so requires, the shipper shall, bearing in mind the agreed transport operation, pack the goods in such a way as to prevent their loss or damage between the time they are taken over by the carrier and their delivery and so as to ensure that they do not cause damage to the vessel or to other goods. According to what has been agreed with a view to carriage, the shipper shall also make provision for appropriate marking in conformity with the applicable international or national regulations or, in the absence of such regulations, in accordance with rules and practices generally recognized in inland navigation.</p> <p>Art. 6 § 4 Subject to the obligations to be borne by the carrier, the shipper shall load and stow the goods and</p>		<p><u>Loading of the goods</u> <i>According to CMNI it is the shipper's duty to load, store and secure the goods. The parties may agree contractually that the carrier undertakes to load, store and secure the goods in lieu of the shipper. In that case, the taking over of the goods happens when the load begins.</i></p> <p><i>The CMNI provisions do not address the issue of the unloading/ discharging of the goods, leaving it the contractual freedom of the parties.</i></p> <p><i>Article 11 § 3 CIM deals with the conditions under which the obligation for the carrier to examine the consignment arises. First, it is necessary to distinguish whether loading is the responsibility of the carrier or of the consignor.</i></p> <p><i>According to Article 13 CIM, the question of responsibility for loading is subject to an agreement between the consignor and the carrier. In the absence of such an agreement, loading is the responsibility of the</i></p>

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	<p><u>Art. 15 § 1</u> 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 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><u>Art. 18 § 1</u> 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> <ul style="list-style-type: none"> a) to discontinue the carriage of the goods; b) to delay the delivery of the goods; c) to deliver the goods to a consignee different from the one entered on the consignment note; d) to deliver the goods at a place other than the place of destination entered on the consignment note. <p><u>Art. 18 § 4</u> The consignee's right to modify the contract of carriage shall be extinguished in cases where he has</p>	<p>secure them in accordance with inland navigation practice unless the contract of carriage specifies otherwise.</p> <p><u>Art. 8 § 1</u> The shipper shall, even if no fault can be attributed to him, be liable for all the damages and costs incurred by the carrier or the actual carrier by reason of the fact that:</p> <ul style="list-style-type: none"> (a) the particulars or information referred to in articles 6, paragraph 2, or 7, paragraph 1, are missing, inaccurate or incomplete; (b) the dangerous or polluting goods are not marked or labelled in accordance with the applicable international or national regulations or, if no such regulations exist, in accordance with rules and practices generally recognized in inland navigation; (c) the necessary accompanying documents are missing, inaccurate or incomplete. <p><u>Art. 8 § 2</u> The shipper shall be responsible for the acts and omissions of persons of whose services he makes use to perform the tasks and meet the</p>		<p><i>carrier in respect of packages, whereas the consignor is responsible in the case of wagon loads.</i></p> <p><i>The consignee has subsidiary responsibility for unloading only after delivery, i.e. when it acceded to the contract of carriage by accepting the consignment note (see also the case under Article 18 § 3 of the CIM UR).</i></p> <p><u>Right of disposal and to amend the contract of carriage</u> <i>According to CIM, 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 CIM).</i></p> <p><i>According to Article 18 § 1 CIM, the right to subsequently modify the contract of carriage is intrinsically linked with the consignor's right of disposal of the goods; however, the exercising of this right is not absolute and is only possible under certain conditions. First of all, the subsequent modification of the</i></p>

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	<p>a) taken possession of the consignment note; b) accepted the goods; c) asserted his rights in accordance with Article 17 § 3; d) given instructions for delivery of the goods to another person in accordance with § 5 and when that person has asserted his rights in accordance with Article 17 § 3.</p> <p>Art. 18 § 5 If the consignee has given instructions for delivery of the goods to another person, that person shall not be entitled to modify the contract of carriage.</p> <p>Art. 18 § 2 The consignor's right to modify the contract of carriage shall, notwithstanding that he is in possession of the duplicate of the consignment note, be extinguished in cases where the consignee a) has taken possession of the consignment note; b) has accepted the goods; c) has asserted his rights in accordance with Article 17 § 3;</p>	<p>obligations referred to in articles 6 and 7, when such persons are acting within the scope of their employment, as if such acts or omissions were his own.</p> <p>Art. 14 § 1 The shipper shall be authorized to dispose of the goods; in particular, he may require the carrier to discontinue the carriage of the goods, to change the place of delivery or to deliver the goods to a consignee other than the consignee indicated in the transport document.</p> <p>Art. 14 § 2 The shipper's right of disposal shall cease to exist once the consignee, following the arrival of the goods at the scheduled place of delivery, has requested delivery of the goods and, (a) where carriage is under a consignment note, once the original has been handed over to the consignee; (b) where carriage is under a bill of lading, once the shipper has relinquished all the originals in his possession by handing them over to another person.</p>		<p><i>contract of carriage must be possible, lawful and reasonable and not affect the normal operation of the carrier at that time nor prejudice the sender or consignees of other consignments (Article 19 § 3 CIM).</i></p> <p><i>Under CMNI and in contrast to CIM, it is in principle the shipper to dispose of the goods and to give instructions to the carrier in relation to the goods. The catalogue of instructions (art. 14 § 1) is not exhaustive, the instructions may also concern other issues.</i></p> <p><i>The shipper's right of disposal may shift to the consignee when the goods have arrived at the scheduled place of delivery. If the carriage is made under a consignment note, the consignee only acquires the right of disposal if the original document has been handed over to him. If the transport document is a bill of lading, the consignee's right to give instructions to the carrier requires that the shipper has passed on all originals of the bill to a third party and is not anymore in possession of any of the original bills.</i></p>

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	<p>d) is entitled, in accordance with § 3, to give orders; from that time onwards, the carrier shall comply with the orders and instructions of the consignee.</p> <p>Art. 18 § 3 The consignee shall have the right to modify the contract of carriage from the time when the consignment note is drawn up, unless the consignor indicates to the contrary on the consignment note.</p>	<p>Art. 15 The shipper or, in the case of article 14, paragraphs 2 and 3, the consignee, must, if he wishes to exercise his right of disposal:</p> <p>(a) where a bill of lading is used, submit all originals prior to the arrival of the goods at the scheduled place of delivery;</p> <p>(b) where a transport document other than a bill of lading is used, submit this document, which shall include the new instructions given to the carrier;</p> <p>(c) compensate the carrier for all costs and damage incurred in carrying out instructions;</p> <p>(d) pay all the agreed freight in the event of the discharge of the goods before arrival at the scheduled place of delivery, unless the contract of carriage provides otherwise.</p> <p>Art. 14 § 3 By an appropriate entry in the consignment note, the shipper may, when the consignment note is issued, waive his right of disposal to the consignee.</p>		<p><u>Liability of the shipper/consignor for information concerning the goods</u> <i>Under CMNI, the shipper is liable for missing, inaccurate or incomplete information concerning the goods. The shipper must present the accompanying documents to the carrier at the time the goods are handed over.</i></p> <p><i>According to Art. 8 CMNI the shipper is liable without fault in the cases listed. It refers to missing, inaccurate or incomplete particulars or information. Further, the shipper is responsible if dangerous goods are not marked or labelled. Finally, the shipper is responsible if the necessary accompanying documents are missing, inaccurate or incomplete. The provisions of Art. 8 CMNI are not exhaustive.</i></p> <p><i>Even though the shipper's liability does not require a fault of his, his liability does not arise if the fault is attributable to the carrier. The burden of proof lies with the shipper.</i></p> <p><i>Under CIM, the principles of liability/obligations of the consignor are similar to those of CMNI: The</i></p>

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				<i>consignor is responsible towards the carrier for the particulars entered on the consignment note (see Art. 8 § 1 CIM) as well as the availability of the necessary documents for delivering the goods.</i>
Rights and Obligations of the carrier⁵	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 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. 3 § 1 The carrier shall carry the goods to the place of delivery within the specified time and deliver them to the consignee in the condition in which they were handed over to him. Art. 3 § 2 Unless otherwise agreed, the taking over and delivery of the goods shall take place on board the vessel. Art. 3 § 5 Except as provided by the obligations incumbent on the shipper, the carrier shall ensure that the loading, stowage and securing of		<i>The main obligation of the carrier is – according to CIM as well as to CMNI – the delivery of the goods to the place of delivery. CMNI expressly mentions that the carrier’s duty encompasses a timely arrival of the goods at the place of delivery. CIM stipulates that the consignor and the carrier agree to who is responsible for the loading and unloading of goods. Article 11 § 3 of the CIM UR deals with the conditions under which the obligation for the carrier to examine the consignment arises. First, it is</i>

⁵ 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.

According to Art. 1 point 2. CMNI “Carrier” means any person by whom or in whose name a contract of carriage has been concluded with a shipper.

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	<p><u>Art. 13 § 1</u> 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><u>Art. 17 § 1</u> 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><u>Art. 20 § 1</u> When circumstances prevent the carriage of goods, the carrier shall decide whether it is preferable to carry the 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</p>	<p>the goods do not affect the safety of the vessel.</p> <p><u>Art. 3 § 6</u> The carrier is entitled to carry the goods on deck or in open vessels only if it has been agreed with the shipper or if it is in accordance with the usage of the particular trade or is required by the statutory regulations.</p> <p><u>Art. 8 § 1</u> The carrier may not avail himself of the liability of the shipper if it is proven that the fault is attributable to the carrier himself, his servants or agents. The same applies to the actual carrier.</p> <p><u>Art. 9 § 1</u> The carrier may terminate the contract of carriage if the shipper has failed to perform the obligations set out in article 6, paragraph 2, or article 7, paragraphs 1 and 2.</p> <p><u>Art. 9 § 2</u> If the carrier makes use of his right of termination, he may unload the goods at the shipper's expense and</p>		<p><i>necessary to distinguish whether loading is the responsibility of the carrier or of the consignor.</i></p> <p><i>According to Article 14 CIM, the question of responsibility for loading is subject to an agreement between the consignor and the carrier. In the absence of such an agreement, loading is the responsibility of the carrier in respect of packages, whereas the consignor is responsible in the case of wagon loads.</i></p> <p><i>In line with Art. 6 § 4 CMNI, the loading of the goods is the shipper's obligation. The carrier must however ensure that the load by the shipper does not impair the vessel's seaworthiness or safety. When the carrier takes on the task to load and unload, he is not entitled to carry the goods on deck.</i></p> <p><i>Unloading of the goods from the vessel is- according to Art. 10 § 2 CMNI not an obligation of the carrier but only placing of the goods at the disposal of the consignee (see point "delivery"). Under CIM consignor and the carrier agree to who is</i></p>

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	any relevant information available to the carrier.	claim optionally the payment of any of the following amounts: (a) one third of the agreed freight; or (b) in addition to any demurrage charge, a compensation equal to the amount of costs incurred and the loss caused, as well as, should the voyage have already begun, a proportional freight for the part of the voyage already performed.		<p><i>responsible for the unloading of goods.</i></p> <p>CIM as well as CMNI foresee no obligation of the carriers to check the content of the goods.</p> <p><i>According to Art. 9 CMNI the carrier may terminate the contract of carriage if the shipper fails to furnish the carrier the particulars relating to the goods, namely to submit the required accompanying documents, to inform the carrier on the danger and the risks of pollution inherent in the goods and the precautions to be taken by the carrier, as well as to provide the necessary authorization of the carriage of the dangerous or polluting goods. In all cases, the relevant point in time is when the goods are delivered to the carrier by the shipper. The carrier's right to terminate arises even if there is no fault involved on the shipper's side. The carrier may then claim deadfreight (1/3 of the agreed freight) or, alternatively, the costs incurred, and the freight earned.</i></p> <p><i>In contrast to this right of termination regulated in the CMNI, CIM does not</i></p>

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				<i>provide for such a right of termination in favor of the carrier. In this respect, the carrier may only exercise his rights under the consignor's liability (see e.g. Art. 14 and 15 CIM).</i>
Delivery	<p><u>Art. 17 § 1</u> 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><u>Art. 21 § 1</u> When circumstances prevent delivery, the carrier must without delay inform the consignor and ask him for instructions, save where the consignor 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><u>Art. 22</u> § 1. The carrier shall be entitled to recover the costs occasioned by</p>	<p><u>Art. 5</u> The carrier shall deliver the goods within the time limit agreed in the contract of carriage or, if no time limit has been agreed, within the time limit which could reasonably be required of a diligent carrier, taking into account the circumstances of the voyage and unhindered navigation.</p> <p><u>Art. 10 § 1</u> Notwithstanding the obligation of the shipper under article 6, paragraph 1, the consignee who, following the arrival of the goods at the place of delivery, requests their delivery, shall, in accordance with the contract of carriage, be liable for the freight and other charges due on the goods, as well as for his contribution to any general average. In the absence of a transport document, or if such document has not been</p>		<p><i>The contract of carriage under CIM is considered to be fulfilled when the consignment note is handed over and the goods are delivered to the (authorised) consignee at the place designated for delivery, in addition to the receipt of and payment of the amounts due and in accordance with the instructions stipulated in the contract (e.g. payment of transport costs, handing over of the original copy of the consignment note, confirmation of receipt, etc.).</i></p> <p><i>Delivery is defined by the CMNI as the placing of the goods at the disposal of the consignee to allow him to take possession of them. According to Art. 10 § 2 CMNI placing of the goods at the disposal of the consignee considers a delivery.</i></p>

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	<p>a) his request for instructions, b) the carrying out of instructions received, c) the fact that instructions requested do not reach him or do not reach him in time, 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>presented, the consignee shall be liable for the freight agreed with the shipper if it corresponds to market practice.</p> <p>Art. 10 § 2 The placing of the goods at the disposal of the consignee in accordance with the contract of carriage or with the usage of the particular trade or with the statutory regulations applicable at the port of discharge shall be considered a delivery. The imposed handing over of the goods to an authority or a third party shall also be considered a delivery.</p> <p>Art. 23 § 1 The acceptance without reservation of the goods by the consignee is prima facie evidence of the delivery by the carrier of the goods in the same condition and quantity as when they were handed over to him for carriage.</p> <p>Art 3 § 4 Where it has been agreed that the carriage shall be performed by a</p>		<p><i>Other than CIM, CMNI only expressly stipulates that a bill of lading has to be handed over to the consignee. The handing over of the “pure” consignment note in connections with the delivery of the goods is not expressly mentioned. This is due to the special function of a bill of lading as document of title (Art. 13 § 1 CMNI).</i></p> <p><i>CIM UR define actions the parties of the contract of carriage have to carry out if circumstances prevent delivery. After informing the consignor and 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.</i></p> <p><i>Under CIM the carrier may proceed to sell 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 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</i></p>

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	<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 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</p>	<p>specific vessel or type of vessel, the carrier shall be entitled to load or transship the goods in whole or in part on to another vessel or on to another type of vessel without the consent of the shipper, only:</p> <p>(a) in circumstances, such as low water or collision or any other obstacle to navigation, which were unforeseeable at the time when the contract of carriage was concluded and in which the loading or transshipment of the goods is necessary in order to perform the contract of carriage, and when the carrier is unable to obtain within an appropriate period of time instructions from the shipper, or</p> <p>(b) when it is in accordance with the practice prevailing in the port where the vessel is located.</p>		<p><i>received instruction from the person entitled.</i></p> <p><i>In contrast to CIM there are no general provisions stipulated in CMNI concerning circumstances preventing to transport or deliver the goods. This means that generally a reference is made to the applicable national law (see Art. 29 CMNI). Art 3 § 4 CMNI addresses only a certain range of possible legal consequences of obstacles in which the carrier shall be entitled to load or transship the goods on to another vessel or type of vessel if he does not receives instructions from the shipper: circumstances, such as low water or collision or any other obstacle to navigation, which were unforeseeable but are necessary to perform the contract of carriage or when it is in accordance with the practice prevailing in the port where the vessel is located.</i></p> <p><i>Under CMNI, the notion of “delivery” is linked to the consignee: he is entitled of the goods and may claim their delivery from the carrier.</i></p>

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	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.			<i>Under the CMNI, the consignee is under the obligation, in certain circumstances, to make a reservation in respect of loss of or damage to the goods. A reservation is a declaration by the consignee to the carrier that goods are lost or damaged. The shipper may declare a reservation on behalf of the consignee.</i>
Transit period/Delay in delivery	<p>Art. 16</p> <p>§ 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.</p> <p>§ 2. Subject to §§ 3 and 4, the maximum transit periods shall be as follows:</p> <p>a) for wagon-load consignments</p> <ul style="list-style-type: none"> - period for consignment 12 hours, - period for carriage, for each 400 km or fraction thereof 24 hours; <p>b) for less than wagon-load consignment</p> <ul style="list-style-type: none"> - period for consignments 24 hours, - period for carriage, for each 200 km or fraction thereof 24 hours. 			<p>CIM as well as CMNI regulations primarily link to contractually agreed time of the transit period. In the absence, CIM has elaborated provisions setting periods for delivery. In practice, these provisions that determine the transit period are very important for international carriages of goods by rail.</p> <p>According to Art. 5 CMNI, the carrier must respect a time limit for delivering the goods. If no time limit has been agreed, the carrier has to deliver within a reasonable time. In the practice of inland waterway navigation, contractual delivery periods are often missing.</p>

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	<p>The distances shall relate to the agreed route or, in the absence thereof, to the shortest possible route.</p> <p>§ 3. The carrier may fix additional transit periods of specified duration in the following cases:</p> <p>a) consignments to be carried</p> <ul style="list-style-type: none"> - by lines of a different gauge, - by sea or inland waterway, - by road if there is no rail link; <p>b) exceptional circumstances causing an exceptional increase in traffic or exceptional operating difficulties.</p> <p>The duration of the additional transit periods must appear in the General Conditions of Carriage.</p> <p>§ 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><i>In comparison to CIM, CMNI stipulates a very broad and interpretable provision regarding the concrete delivery period in the absence of a contractual regulation.</i></p> <p><i>CIM specifies ex lege concrete rules to define the transit period.</i></p>
Dangerous goods	<p><u>Art. 8 § 1</u> The consignor shall be responsible for all costs, loss or damage sustained by the carrier by reason of</p>	<p><u>Art. 7 § 1</u> If dangerous or polluting goods are to be carried, the shipper shall, before handing over the goods, and in addition to the particulars referred</p>	<p><u>CLNI 2012</u> <u>Art. 7 § 1</u> The limits of liability for a vessel carrying dangerous goods in respect of claims arising in respect of</p>	<p><i>Article 9 CIM stipulates the consequences if the consignor has omitted the inscriptions prescribed by RID for international carriage of</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p>b) the consignor omitting to make the entries prescribed by RID.</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>Art. 2 Carriage to which these Uniform Rules apply shall remain subject to the prescriptions of public law, in</p>	<p>to in article 6, paragraph 2, inform the carrier clearly and in writing of the danger and the risks of pollution inherent in the goods and of the precautions to be taken.</p> <p>Art. 7 § 2 Where the carriage of the dangerous or polluting goods requires an authorization, the shipper shall hand over the necessary documents at the latest when handing over the goods.</p> <p>Art. 7 § 3 Where the continuation of the carriage, the discharge or the delivery of the dangerous or polluting goods are rendered impossible owing to the absence of an administrative authorization, the shipper shall bear the costs for the return of the goods to the port of loading or a nearer place, where they may be discharged and delivered or disposed of.</p> <p>Art. 7 § 4 In the event of immediate danger to life, property or the environment, the carrier shall be entitled to unload the goods, to render them innocuous or,</p>	<p>damage resulting directly or indirectly from the dangerous nature of the goods shall be calculated as follows:</p> <p>(b) in respect of all other claims, twice the limit of liability calculated in accordance with Article 6, paragraph 1 (b), but no less than 10 million units of account.</p> <p>Art. 7 § 2 Where the limit of liability calculated in accordance with paragraph 1 (a) is insufficient to pay the claims mentioned therein in full, the limit of liability calculated in accordance with paragraph 1 (b) shall be available for payment of the unpaid balance of claims under paragraph 1 (a) and such unpaid balance shall rank rateably with claims mentioned in paragraph 1 (b).</p>	<p><i>dangerous goods by rail whereas the consignor is responsible and liable for describing the dangerous goods in an appropriate manner (see Art. 7 § 1 h) CIM).</i></p> <p><i>According to Art. 9 CIM, the carrier is only compensated by the consignor if the consignor failed to make the entries prescribed by RID and if he was not aware of the dangerous nature.</i></p> <p><i>CIM in difference to CMNI does not regulate the consequences if the carrier was aware of the danger of the good but an immediate danger occurs during transportation. In this case under CIM, the carrier loses his rights towards the consignor. In any case, in accordance with Art. 2 CIM, the carrier keeps his public law obligations towards the general public in respect of dangerous goods (as stipulated in the respective national law).</i></p> <p><i>The information to be provided by the shipper under the CMNI must refer to the dangers and the risks of pollution inherent to the goods and to the precautions to be taken by the</i></p>

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	<p>particular the prescriptions relating to the carriage of dangerous goods as well as the prescriptions of customs law and those relating to the protection of animals.</p>	<p>provided that such a measure is not disproportionate to the danger they represent, to destroy them, even if, before they were taken over, he was informed or was apprised by other means of the nature of the danger or the risks of pollution inherent in the goods.</p> <p>Art. 7 § 5 Where the carrier is entitled to take the measures referred to in paragraphs 3 or 4 above, he may claim compensation for damages.</p>		<p><i>carrier. The name of the dangerous and polluting goods is included in the transport document to be issued by the carrier. If the shipper fails to provide the relevant information in time (before the goods are delivered to the carrier), the carrier is entitled to terminate the contract.</i></p> <p><i>Art. 7 § 2 CMNI refers to authorisations required along the route, in the port or State where the goods are loaded, in any transit State as well as authorisations required by the port or State where the goods are discharged.</i></p> <p><i>In case of immediate danger, the carrier would not be liable for any late delivery of or damage to or loss of the goods, whether he was aware or not of the danger and the risks inherent to the goods.</i></p> <p><i>For dangerous goods as defined in the ADN, Article 7 CLNI sets twice the general limits of its Article 6 (loss of life: 800'000 SDR; damage to property: 400'000 SDR), subject to a minimum of 10'000'000 SDR.</i></p>

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				<i>Under international rail freight law (CIM, RID) no general extension of compensation regarding dangerous goods is foreseen.</i>
Model of carriage	<p>Art. 26 CIM 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.</p> <p>Art. 27 Where the carrier has entrusted the performance of the carriage to a substitute carrier⁶, the carrier shall nevertheless remain liable in respect of the entire carriage.</p>	<p>Art. 4 § 1 A contract complying with the definition set out in article 1, paragraph 1, concluded between a carrier⁷ and an actual carrier⁸ constitutes a contract of carriage within the meaning of this Convention. For the purpose of such contract, all the provisions of this Convention concerning the shipper shall apply to the carrier and those concerning the carrier to the actual carrier.</p> <p>Art. 4 § 2 Where the carrier has entrusted the performance of the carriage or part thereof to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage to do so, the carrier nevertheless remains</p>		<p><i>Article 26 CIM constitutes in fact a departure from the principle of purely consensual nature of the contract of carriage, since it recognises a presumption that with taking over of the goods and of the consignment note the successive carrier(s) also become a party to the contract of carriage concluded by the contractual carrier.</i></p> <p><i>Also, the CMNI recognises the model of successive carriage provided that the contract was concluded in the name of another carrier (see the definition of carrier according to Art. 1 point 2. CMNI).</i></p> <p><i>Based on the CIM the carrier who concludes the contract with the consignor ("contractual carrier") may</i></p>

⁶ 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.

⁷ According to Art. 1 point 2. CMNI "carrier" means any person by whom or in whose name a contract of carriage has been concluded with a shipper.

⁸ According to Art. 1 point 3. CMNI "actual carrier" means any person, other than a servant or an agent of the carrier, to whom the performance of the carriage or of part of such carriage has been entrusted by the carrier.

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		<p>responsible for the entire carriage according to the provisions of this Convention. All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him.</p> <p><u>Art. 4 § 3</u> The carrier shall in all cases inform the shipper when he entrusts the performance of the carriage or part thereof to an actual carrier.</p> <p><u>Art. 4 § 4</u> Any agreement with the shipper or the consignee extending the carrier's responsibility according to the provisions of this Convention affects the actual carrier only to the extent that he has agreed to it expressly and in writing. The actual carrier may avail himself of all the objections invocable by the carrier under the contract of carriage.</p> <p><u>Art. 4 § 5</u> If and to the extent that both the carrier and the actual carrier are liable, their liability is joint and</p>		<p><i>use one or several “substitute carriers” (“sub-contracting carriers”). The “substitute carrier” or “substitute carriers” have no contractual relationship with either the consignor or the consignee (see Article 3 lit. b) CIM). The contractual carrier is liable towards the consignor and the consignee, in accordance with Article 23 CIM.</i></p> <p><i>In the CMNI a sub-contract of carriage made by the carrier and the actual carrier is a contract of carriage for the purpose of the convention. Thus, all the provisions governing the carrier’s liability also apply to the actual carrier. This implies that the actual carrier is responsible vis-à-vis the shipper and the consignee, even though he has not entered into a contract with any of them. The actual carrier is responsible for the acts and omissions of his servants and agents but not of those of the contractual carrier’s.</i></p> <p><i>As a result of Art. 4 § 2 CMNI, the carrier and the actual carrier are jointly responsible for the loss of or</i></p>

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		several. Nothing in this article shall prejudice any right of recourse as between them.		<p><i>damage to the goods, and for the timely delivery of the goods.</i></p> <p><i>The CMNI concept of “actual carrier” mainly corresponds with the concept of a “substitute carrier” as stipulated in CIM. The carriage model of “successive carriage” is not defined under CMNI.</i></p> <p><i>Under CMNI it is controversial whether the “actual carrier” is the carrier actually performing the carriage or only the one that has been directly entrusted by the contractual carrier with a sub-contract (see Art 4 § 1 CMNI). This question may be relevant in cases of a line of different sub-contracts. Under CIM, the strict wording of the definition of “substitute carrier” causes similar problems in the case of a number of different sub-contracts, since “substitute carrier” means the carrier to whom the contractual or successive carrier has entrusted the performance of the carriage by rail.</i></p>
Liability of the carrier	Art. 23 § 1 (Strict liability) The carrier shall be liable for loss or damage resulting from the total or	Art. 16 § 1 (Strict liability) The carrier shall be liable for loss resulting from loss or damage to the		<i>Obligation of result: strict liability of the carrier in CIM. According to</i>

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and Burden of proof	<p>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.</p> <p>Art. 24 § 1 (Presumed liability) In case of carriage of railway vehicles running on their own wheels and consigned 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</p>	<p>goods caused between the time when he took them over for carriage and the time of their delivery, or resulting from delay in delivery, unless he can show that the loss was due to circumstances which a diligent carrier could not have prevented and the consequences of which he could not have averted.</p> <p>Art. 16 § 2 The carrier's liability for loss resulting from loss or damage to the goods caused during the time before the goods are loaded on the vessel or the time after they have been discharged from the vessel shall be governed by the law of the State applicable to the contract of carriage.</p>		<p><i>Article 23 CIM, the carrier is liable to the customer between the time of taking over of the goods and the time of delivery ("liability of custody"). The contract of international carriage of goods by rail thus starts with the taking over of the goods from the consignor and ends with the delivery of the goods to the authorised consignee. The goods are considered to be taken over for carriage, when the sender passes the goods to the carrier at the agreed place and time, and the carrier correspondingly takes it over (point 11 GTC-CIM of the CIT).⁹ Except where otherwise agreed, consignments are accepted at the normal loading siding at the forwarding station or forwarding terminal and delivered at the normal discharge siding at the destination station or destination terminal.</i></p> <p><i>In Article 24 CIM there are railway-specific provisions on liability for</i></p>

⁹ The GTC-CIM of the CIT (General Terms and Conditions of Carriage for International Freight Traffic by Rail) govern the contractual relationship between carriers and customers for consignments subject to the CIM Uniform Rules or in those cases agreed by all the parties to the contract of carriage. The GTC-CIM are applicable with effect from 1 July 2006 and are available at <https://www.cit-rail.org/en/freight-traffic/contractual-documents/>.

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	<p>of carriage, the carrier shall only be liable to the extent that the wastage exceeds the following allowances, whatever the length of the route:</p> <p>a) two per cent of the mass for liquid goods or goods consigned in a moist condition;</p> <p>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 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</p>			<p><i>fault in case of carriage of railway vehicles as goods.</i></p> <p>CMNI as CIM also stipulates a strict liability and a carrier' responsibility during the whole period during which the goods are in his custody, i.e. from the handing over of the goods, to their delivery to the consignee. Except where otherwise agreed, the period of custody and therefore the carrier's liability is limited to the time on board the vessel, since loading and unloading of the goods is in principle not in the responsibility of the carrier.</p> <p>Art. 16 § 2 CMNI expressly mentions that the law of the State applicable to the contract of carriage applies during the time before the goods are loaded on the vessel and after they have been discharged from the vessel.</p> <p>Under CIM no such regulation is expressly drafted but according to COTIF law (Art. 8 § 2¹⁰) in this case and because CIM Art. 23 does not</p>

¹⁰ Article 8 § 2 COTIF: In the absence of provisions in the Convention, national law shall apply.

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	<p>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><u>Art. 19 § 7</u> 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>			<p><i>applies outside the period of custody, the national law shall apply.</i></p> <p><i>Over the claims of the shipper and the consignee under Art. 16 CMNI, the carrier is offered the possibility to prove that the circumstances of the loss of or damages to the goods was due to circumstances which no one could have been able to prevent. It is not sufficient to demonstrate that the carrier acted with due diligence, he must prove that even a diligent carrier could not have prevented the circumstances.</i></p> <p><i>Burden of proof of the carrier's liability:</i> <i>Under CIM the general principles apply to the determination of the carrier's liability: the claimant has the burden of proof that damage to goods occurred during the period of custody or by exceeding the delivery time of the carrier. If the carrier seeks to exclude his liability, special rules on the burden of proof apply (see points exemptions from liability and burden of proof of the grounds for exemption from liability).</i></p>

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				CMNI conclusion a contrario from Art. 16 § 1: In relation to the loss of or damage to the goods occurring during transport, the same principle as under CIM apply: the burden of proof is fully on the claimant. It is his job to prove that there is damage due to the loss of or damage to the goods and that it occurred in the period of the carrier's custody between acceptance of the goods for transport and their delivery.
Exemptions from liability and Burden of proof	<p>Art. 23 § 2 The carrier shall be relieved of this liability to the extent that the loss or damage or the exceeding of the transit period was caused by the fault of the person entitled, by an order given by the person entitled other than as a result of the fault of the carrier, by an inherent defect in the goods (decay, wastage etc.) or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.</p> <p>Art. 23 § 3 (Special risks – burden of proof reversed)</p>	<p>Art. 16 § 1 (...), unless he can show that the loss was due to circumstances which a diligent carrier could not have prevented and the consequences of which he could not have averted.</p> <p>Art. 18 § 1 (Special exonerations – burden of proof reversed) The carrier and the actual carrier shall be exonerated from their liability when the loss, damage or delay are the result of one of the circumstances or risks listed below:</p>		<p>CIM as well as CMNI both provides for exemptions from liability. The structure of dividing the grounds of exemptions into general grounds and specific ones is the same. Besides that, CMNI regulates the possibility to agree on contractual stipulations that specify that the carrier is not liable (see Art. 25 § 2 CMNI). CIM does not provide such a possibility of contractual freedom, it is conversely, Art. 5 CIM only regulates that the carrier may assume a liability greater.</p> <p>The general grounds of exemptions are regulated under Art. 23 § 2 CIM</p>

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	<p>The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:</p> <p>a) carriage in open wagons pursuant to the General Conditions of Carriage¹¹ 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 units¹² 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 wagons, the consignor uses 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</p>	<p>(a) acts or omissions of the shipper, the consignee or the person entitled to dispose of the goods;</p> <p>(b) handling, loading, stowage or discharge of the goods by the shipper, the consignee or third parties acting on behalf of the shipper or the consignee;</p> <p>(c) carriage of the goods on deck or in open vessels, where such carriage has been agreed with the shipper or is in accordance with the practice of the particular trade, or if it is required by the regulations in force;</p> <p>(d) nature of the goods which exposes them to total or partial loss or damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage (in volume or weight), or the action of vermin or rodents;</p> <p>(e) lack of or defective condition of packaging in the case of goods which, by their nature, are exposed to loss or damage when not packed or when the packaging is defective;</p>		<p>and Art. 16 § 1 in fine CMNI. Both conventions express that the carrier shall be relieved from liability if “unavoidable circumstances” caused the loss. Besides this general ground of relief, CIM also refers to other general grounds of exemptions.</p> <p>Once the claimant has established that the carrier is liable, in case of general grounds of exemption from liability (Article 23 § 2 CIM and Art. 16 § 1 in fine CMNI), 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.</p> <p>Both Conventions also establish different special risks of exemption from liability, that grant special privileges to the carriers for the specific risks of railway or inland waterway transport.</p>

¹¹ 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.

¹² 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.

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	<p>loss or damage when not packed or when not packed properly; c) loading of the goods by the consignor or unloading by the consignee; 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; e) irregular, incorrect or 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>Art. 25 § 1 (Burden of proof) 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>(f) insufficiency or inadequacy of marks identifying the goods; (g) rescue or salvage operations or attempted rescue or salvage operations on inland waterways; (h) carriage of live animals, unless the carrier has not taken the measures or observed the instructions agreed upon in the contract of carriage.</p> <p>Art 18 § 2 (Burden of proof) When, in the circumstances of the case, damage could be attributed to one or more of the circumstances or risks listed in paragraph 1 of the present article, it is presumed to have been caused by such a circumstance or risk. This presumption does not apply if the injured party proves that the loss suffered does not result, or does not result exclusively, from one of the circumstances or risks listed in paragraph 1 of this article.</p> <p>Art. 25 § 2 Notwithstanding the provisions of paragraph 1 of the present article and without prejudice to article 21, contractual stipulations shall be</p>		<p><i>Most of these special exonerations overlap in both Conventions with regard to their content:</i></p> <ul style="list-style-type: none"> - <i>Carriage in open wagons (lit.a) CIM) / on deck or in open vessels (lit. c) CMNI)</i> - <i>inadequacy of packaging (lit. b) CIM and e) CMNI)</i> - <i>loading / unloading of the goods by the consignor / consignee (lit. c) CIM and b) CMNI)</i> - <i>nature of the goods (lit. d) CIM and d) CMNI).</i> - <i>wrong marking/ description of the goods (lit. e) CIM and f) CMNI)</i> - <i>carriage of live animals (lit. f) CIM and h) CMNI).</i> <p><i>Besides these similar grounds, CMNI adds fire or an explosion on board the vessel as CIM adds carriage which was accompanied by an attendant and the loss or damage results from a risk which the attendant was intended to avert.</i></p> <p><i>In case of special exonerations according to Art. 18 § 1 CMNI or special grounds of relief according to Art. 23 § 3 CIM, the burden of proof</i></p>

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	<p>Art. 25 § 2 (Burden of proof) 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 Article 23 § 3, it shall be presumed that it did so arise. The person entitled 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>authorized specifying that the carrier or the actual carrier is not liable for losses arising from: (a) an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, provided that the carrier complied with the obligations set out for the crew in article 3, paragraph 3, unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result; (b) fire or an explosion on board the vessel, where it is not possible to prove that the fire or explosion resulted from a fault of the carrier or the actual carrier or their servants or agents or a defect of the vessel; (c) the defects existing prior to the voyage of his vessel or of a rented or chartered vessel if he can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.</p>		<p><i>is reversed. If the carrier succeeds in proving that the damage/loss could have been caused by one or more of the circumstances listed, it is presumed that the relevant circumstances were, in fact, the reason for the damage. This presumption is however rebuttable, and the claimant is entitled to prove that the loss, in fact, did not result or did not result exclusively from one of the circumstances mentioned.</i></p> <p><i>Under the CMNI regime, provisions regarding the parties' liability are mandatory. However, Art. 25 § 2 CMNI provides with several exemptions from liability that can be contractually stipulated, namely the error in navigation, fire or explosion and defects of the vessel.</i></p> <p><i>Under the CIM regime, provisions regarding the parties' liability are also mandatory leaving only room to establish a liability greater and more burdensome for the carrier (Art. 5 CIM).</i></p> <p><i>If a contractual exoneration for liability is agreed according to Art. 25 § 2 CMNI, the burden of proof</i></p>

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				<i>according to these special grounds of relief are not explicitly specified in CMNI.</i>
Presumption for loss of the goods	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.			CIM specifies a timeframe after that consignee or consignor are entitled to consider the goods as lost. <i>This kind of a “fiction” is not to be found under CMNI.</i>
Compensation	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.	Art. 19 § 1 Where the carrier is liable for total loss of goods, the compensation payable by him shall be equal to the value of the goods at the place and on the day of delivery according to the contract of carriage. Delivery to a person other than the person entitled is deemed to be a loss. Art. 19 § 2 In the event of partial loss or damage to goods, the carrier shall be liable only to the extent of the loss in value.		CIM and CMNI – as most of the transport conventions – regulate the “value compensation principle” for loss of or damage to the goods. This is to say that both Conventions stipulate that compensation for loss or damage to the goods is paid in monetary form and not a recovery of the original condition of the goods. Whereas CIM regulates that the value of the goods shall be determined on the point in time and place where the goods were taken over, CMNI foresees the place and day of delivery as reference.

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p><u>Art. 30 § 4</u> The carrier must, in addition, refund the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost except excise duties for goods carried under a procedure suspending those duties.</p> <p><u>Art. 32 § 1</u> 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><u>Art. 31</u> 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;</p>	<p><u>Art. 19 § 3</u> The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of goods of the same kind and quality at the place of delivery.</p> <p><u>Art. 19 § 4</u> In respect of goods which by reason of their nature are exposed to wastage during carriage, the carrier shall be held liable, whatever the length of the carriage, only for that part of the wastage which exceeds normal wastage (in volume or weight) as determined by the parties to the contract of carriage or, if not, by the regulations or established practice at the place of destination.</p> <p><u>Art. 19 § 5</u> The provisions of this article shall not affect the carrier's right concerning the freight as provided by the contract of carriage or, in the</p>		<p><i>Under CIM and CMNI, the carrier will in principle not be held responsible for claims for loss of profit, or any other cost. But according Art. 30 § 4 CIM, besides compensating the (loss in) value of the goods, the carrier must refund the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost.</i></p> <p><i>In accordance with Article 5 of the CIM, the carrier is permitted to <u>extend</u> his liability and his obligations as stipulated in the CIM.</i></p> <p><i>In contrast to CIM, CMNI in this respect according to Art. 25 § 1 regulates that increasing the carrier's liability within the meaning of the CMNI should be null and void.</i></p> <p><i>Under the CMNI regime, the carrier's liability does not extend beyond the value or the loss of value of the goods.</i></p> <p><i>For delay in delivery CIM and CMNI both link the maximum compensation to the freight carriage charges to be paid.</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p>b) one per cent of the mass for dry goods.</p> <p>§ 2 The limitation of liability provided for in § 1 may not be invoked if, having regard to the circumstances of a particular case, it is proved that the loss was not due to causes which would justify the allowance.</p> <p>§ 3 Where several packages are carried under a single consignment note, the wastage in transit shall be calculated separately for each package if its mass on consignment is shown separately on the consignment note or can be ascertained otherwise.</p> <p>§ 4 In case of total loss of goods or in case of loss of a package, no deduction for wastage in transit shall be made in calculating the compensation.</p> <p><u>Art. 31 § 5</u> This Article shall not derogate from Articles 23 and 25.</p>	<p>absence of special agreements in this regard, by the applicable national regulations or practices.</p> <p><u>Art. 23 § 5</u> No compensation shall be payable for damage resulting from delay in delivery except when the consignee can prove that he gave notice of the delay to the carrier within 21 consecutive days following delivery of the goods and that this notice reached the carrier.</p> <p><u>Art. 26</u> Nothing in this Convention shall prevent the application of provisions in the contract of carriage or national law regarding the calculation of the amount of damages and contributions payable in the event of general average.</p>		
Limitation of compensation	<p><u>Art. 30 § 2 (limitation regarding loss)</u> Compensation shall not exceed 17 units of account per kilogramme of gross mass short.</p>	<p><u>Art. 20 § 1 (limitation regarding loss or damage)</u> Subject to article 21 and paragraph 4 of the present article, and regardless of the action brought against him, the carrier shall under</p>	<p>CLNI 2012 <u>Art. 6 § 1</u> The limits of liability for claims other than those mentioned in Articles 7 and 8, arising on any distinct</p>	<p><i>Under CIM the maximum limit of liability of the carrier with respect to the customer in the event of total or partial loss of the goods is set at</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p><u>Art. 32 § 2 (limitation regarding damage)</u> The compensation shall not exceed: a) if the whole consignment has lost value through damage, the amount which would have been payable in case of total loss; b) if only part of the consignment has lost value through damage, the amount which would have been payable had that part been lost.</p> <p><u>Art. 33 § 1 (limitation regarding delay)</u> If loss or damage results from the transit period being exceeded, the carrier must pay compensation not exceeding four times the carriage charge.</p> <p><u>Art. 33 § 3</u> 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>no circumstances be liable for amounts exceeding 666.67 units of account per package or other shipping unit, or 2 units of account per kilogram of weight, specified in the transport document, of the goods lost or damaged, whichever is the higher. If the package or other shipping unit is a container and if there is no mention in the transport document of any package or shipping unit consolidated in the container, the amount of 666.67 units of account shall be replaced by the amount of 1,500 units of account for the container without the goods it contains and, in addition, the amount of 25,000 units of account for the goods which are in the container.</p> <p><u>Art. 20 § 2</u> Where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the transport document as packed in or on such article of transport are deemed packages or shipping units.</p>	<p>occasion, shall be calculated as follows: (a) in respect of claims for loss of life or personal injury: (i) for a vessel not intended for the carriage of cargo, in particular a passenger vessel, 400 units of account per cubic metre of displacement at maximum permitted draught, increased for vessels equipped with mechanical means of propulsion by 1 400 units of account per kW of power of the propulsion machinery; (ii) for a vessel intended for the carriage of cargo, 400 units of account per tonne of the vessel's deadweight, increased for vessels equipped with mechanical means of propulsion by 1 400 units of account per kW of power of the propulsion machinery; (iii) for a pusher or tug, 1 400 units of account per kW of power of the propulsion machinery; (iv) for a pusher which, at the time the damage was caused, was coupled to barges in a pushed train, the limit of liability calculated in accordance with sub-paragraph (iii)</p>	<p><i>SDR 17 (approx. 23 EUR)¹³ per missing kilogram of gross mass (Article 30 § 2 CIM) and in the event of damage at a percentage of the loss of value of the goods noted at the place of destination (Article 32 § 1 CIM).</i></p> <p><i>CMNI - in contrast to CIM - classifies the maximum limits of compensation for the goods lost or damage into two categories. The CMNI limits the compensation to 666,67 SDR/package or 2 SDR/kg, whichever is the higher ("general limitation amount", Art. 20 § 1 sentence 1). In case of consolidated cargo, if the transport document doesn't contain packages or shipping units, the SDR amount is 1'500 SDR for the container and 25'000 SDR for the goods in the container. The carrier, the actual carrier and any of their servant would be liable for the same loss as joint debtors (Art. 20 § 1 sentence 2).</i></p> <p><i>The maximum amount of compensation in both Conventions is</i></p>

¹³ Daily exchange rates of the SDR are available at the IMF web-page: www.imf.org/external/index.htm.

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
		<p>Except as aforesaid, the goods in or on such article of transport are deemed one shipping unit. In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.</p> <p><u>Art. 20 § 3 (limitation regarding delay)</u> In the event of loss due to delay in delivery, the carrier's liability shall not exceed the amount of the freight. However, the aggregate liability under paragraph 1 and the first sentence of the present paragraph shall not exceed the limitation which would be established under paragraph 1 for total loss of the goods with respect to which such liability was incurred.</p> <p><u>Art. 20 § 5</u> The aggregate of the amounts of compensation recoverable from the carrier, the actual carrier and their servants and agents for the same loss shall not exceed overall the</p>	<p>shall be increased by 200 units of account per tonne of deadweight of the pushed barges; this increase shall not apply in so far as it can be proved that the pusher has rendered salvage or assistance services to one or more of these barges;</p> <p>(v) for a vessel equipped with mechanical means of propulsion which at the time the damage was caused was providing propulsion for other vessels coupled to this vessel, the limit of liability calculated in accordance with sub-paragraphs (i), (ii) or (iii) shall be increased by 200 units of account per tonne of deadweight or cubic metre of displacement of the other vessels; this increase shall not apply in so far as it can be proved that this vessel has rendered salvage or assistance services to one or more of the coupled vessels;</p> <p>(vi) for floating and mobile appliances or plant within the meaning of the second sentence of Article 1, paragraph 2 (b), their value at the time of the occurrence;</p> <p>(b) in respect of all other claims, half of the limit of liability calculated in accordance with paragraph (a);</p>	<p><i>calculated according to the IMF's Special Drawing Rights (SDR). The values are deposited by the IMF.</i></p> <p><i>Under the CMNI regime, the limitation amount in relation to the carrier's liability for delay in delivery is limited to the amount of the freight.</i></p> <p>CIM provides for compensation for delay of up to four times the carriage charge, Article 33 § 1.</p> <p><i>It must be noted that the carrier according to CMNI that is a vessel owner, hirer or charterer may limit their liability in accordance with CLNI. Art. 27 CMNI clarifies that the rights and duties may arise from international conventions, regarding limitation of compensation, i.e. the CLNI 1988 and 2012.</i></p> <p><i>The CLNI 2012 provides the general limits for personal injury (400'000 SDR) and property (20'000 SDR). Different limits apply depending on the type of vessel.</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the 2002 Protocol</u>	COMMENTS
		<p>limits of liability provided for in this article.</p> <p>Art. 27 This Convention does not modify the rights or duties of the carrier provided for in international conventions or national law relating to the limitation of liability of owners of inland navigation or maritime vessels.</p>	<p>(c) when the limit of liability calculated in accordance with paragraph (a) is insufficient to pay the claim mentioned therein in full, the limit of liability calculated in accordance with paragraph (b) shall be available for payment of the unpaid balance of claims under paragraph (a) and such unpaid balance shall rank rateably with claims mentioned under paragraph (b);</p> <p>(d) in no case shall the limits of liability be less than 400 000 units of account for claims in respect of loss of life or personal injury or less than 200 000 units of account for all other claims.</p> <p>Art. 6 § 3 The limits of liability mentioned in paragraph 1 (d) shall also apply to any salvor rendering salvage or assistance services to a vessel and not operating from any inland navigation vessel or seagoing vessel, and to any salvor operating solely on the vessel to which he is rendering salvage or assistance services.</p>	

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the 2002 Protocol</u>	COMMENTS
			<p><u>Athens Convention</u> Art. 8 § 2 The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 50,000 francs per vehicle, per carriage.</p> <p>Art. 8 § 3 The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 18,000 francs per passenger, per carriage.</p>	
Loss of the right to limit liability	<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>Art. 21 § 1 The carrier or the actual carrier is not entitled to the exonerations and limits of liability provided for in this Convention or in the contract of carriage if it is proved that he himself caused the damage by an act or omission, either with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result.</p> <p>Art. 21 § 2 Similarly, the servants and agents acting on behalf of the carrier or the</p>	<p><u>Athens Convention</u> Art. 13 § 1 The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.</p> <p>Art. 13 § 2 The servant or agent of the carrier or of the performing carrier shall not be</p>	<p><i>As in the other different transport Conventions also CIM has a provision for the loss of the right to limit responsibility. The limit for liability does not apply in the case of gross misconduct by the carrier as of intentional recklessness, wilful acts by the carrier or his auxiliaries on article 40 CIM (see below).</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
		actual carrier are not entitled to the exonerations and limits of liability provided for in this Convention or in the contract of carriage, if it is proved that they caused the damage in the manner described in paragraph 1.	entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.	<i>The same applies with article 21 CMNI and 13 CLNI, both for the carriers and their servants or agents.</i>
Extension of the carrier's liability/Higher limits of compensation	<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>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</p>	<p>Art. 22 The exonerations and limits of liability provided for in this Convention or in the contract of carriage apply in any action in respect of loss or damage to or delay in delivery of the goods covered by the contract of carriage, whether the action is founded in contract, in tort or on some other legal ground.</p> <p>Art. 25 § 1 Any contractual stipulation intended to exclude or to limit or, subject to the provisions of article 20, paragraph 4, to increase the liability, within the meaning of this Convention, of the carrier, the actual carrier or their servants or agents, to shift the burden of proof or to reduce the periods for claims or limitations referred to in articles 23 and 24 shall be null and void. Any stipulation</p>		<p><i>Under CIM, only an extension of the carrier's liability in the interest of the customer is provided for and no general limitation.</i></p> <p><i>Whereas, Article 5 of the CIM allows the carrier to extend his liability and obligations beyond what is required by the CIM, a dispensatory regulation in respect of indemnity will not always constitute an extension of liability. In this light, with respect to methods of compensation for non-compliance with transit periods, also limitation of the liability is possible. Such limitations of liability can be in the interest of both parties to the contract of carriage (e.g. if the limitation is linked to methods which permit an accelerated settlement of the damage).</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p>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>assigning a benefit of insurance of the goods in favour of the carrier is also null and void.</p> <p>Art. 20 § 4 The maximum limits of liability mentioned in paragraph 1 do not apply:</p> <p>(a) where the nature and higher value of the goods or articles of transport have been expressly specified in the transport document and the carrier has not refuted those specifications, or</p> <p>(b) where the parties have expressly agreed to higher maximum limits of liability.</p>		<p>CMNI - in contrast to Art. 5 CIM - stipulates that in principle and besides some exceptions any exclusion, limitation but also increase of liability of the carrier /actual carrier is prohibited. Therefore, the CMNI liability provisions shall be in principle not deviated from, neither for the benefit nor against the carrier. One exception of this principle is, that under Art. 20 § 4 CMNI, the limitation amount may be increased in 2 different ways. The shipper can require that the carrier state the higher value of the goods in the transport document; without an objection to these specifications, the limitation amount is the declared value of the goods. Alternatively, the parties can expressly agree to increased limits of liability.</p> <p>In CIM, the carrier and the consignor can declare also a higher value of the goods.</p> <p>In addition, in CIM the consignor may declare a special interest in delivery.</p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
Interest	<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.</p> <p>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>CIM provides for 5 % rates of interest on compensation <u>for the customer</u> (consignor; consignee). CIM does not contain a provision for interest on compensation for the carrier.</p> <p>CMNI does not contain at all provisions for interest on compensation. In such a case it is necessary to refer to the national law.</p>
Liability in case of nuclear incident	<p>Art. 39 The carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.</p>	<p>Art. 27 § 2 The carrier shall be relieved of liability under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation or other authorized person is liable for such damage pursuant to the laws and regulations of a State governing liability in the field of nuclear energy.</p>		<p>The wording of both Article 39 CIM and Article 27 § 1 CMNI is with reference to the national law of the State applicable to the loss or damage caused by a nuclear incident.</p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
Servants and agents liability	<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>Art. 17 § 1 The carrier shall be responsible for the acts and omissions of his servants and agents of whose services he makes use during the performance of the contract of carriage, when such persons are acting within the scope of their employment, as if such acts or omissions were his own.</p> <p>Art. 17 § 2 When the carriage is performed by an actual carrier in accordance with article 4, the carrier is also responsible for the acts and omissions of the actual carrier and of the servants and agents of the actual carrier acting within the scope of their employment.</p> <p>Art. 17 § 3 If an action is brought against the servants and agents of the carrier or the actual carrier, such persons, if they prove that they acted within the scope of their employment, are entitled to avail themselves of the</p>		<p><i>The principles of attribution of servant`s/ agent`s liability to the carrier are comparable in CIM and CMNI:</i></p> <ul style="list-style-type: none"> - <i>the carrier uses the person for respectively during the performance of carriage</i> - <i>the person acts within the scope of its function/employment</i> - <i>the carrier is <u>not</u> responsible if the person acts outside the scope, or when their acts and omissions were merely occasioned by their employment.</i> <p><i>In CIM, carriers are liable for their servants and agents. The Convention specifies that such liability refers to cases where the carrier uses those persons for <u>the performance of the carriage</u> when those servants and other persons are acting within the scope of their functions/employment/ duties.</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
		<p>exonerations and limits of liability which the carrier or the actual carrier is entitled to invoke under this Convention.</p> <p>Art. 17 § 4 A pilot designated by an authority and who cannot be freely selected shall not be considered to be a servant or agent within the meaning of paragraph 1.</p>		<p><i>In the CMNI regime, the carrier is also responsible for their servants and agents when they act within the scope of their employment. The carrier is not responsible if the servants act outside the scope, or when their acts and omissions were merely occasioned by their employment.</i></p> <p><i>Art. 17 § 2 CMNI clarifies that the (contractual) carrier is also responsible for the acts and omissions of the actual carrier. This statement can be found also in Art. 27 § 1 CIM where the responsibility of the (contractual) carrier is regulated, also if this carrier has entrusted the performance of the carriage, to a substitute carrier.</i></p> <p><i>The principle of Art. 17 § 3 CMNI that if an action is brought against the servants and agents of the carrier, also they may be entitled to avail themselves of the exonerations and limits of liability which the carrier is entitled to invoke can be also found under CIM Art. 41 § 2. This concept is well recognized in international transport law and makes clear that the exonerations</i></p>

Regime	COTIF / CIM	CMNI	CLNI (2012) Athens Convention including the 2002 Protocol	COMMENTS
				<p><i>and limitations of the contract of carriage should not be undermined by a claimant who decides not to bring a claim against the carrier but against the servants or agents, who then may have internal recourses against the carrier.</i></p> <p><i>Article 40 sentence 2 CIM stipulates a speciality of COTIF law compared to other transport laws: the sentence makes 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. The background of this regulation is the historical splitting the railways into transport and infrastructure sections for which the customer should not suffer any disadvantage. The consequence is that the CIM-carrier is responsible for the infrastructure manager towards the customer.</i></p> <p><i>CMNI stipulates an inland waterway specific regulation: The principle that the carrier according to Art 17 CMNI is liable for the vessel's crew including the pilot (as his agents/ servants), is removed by Art. 17 § 4</i></p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the 2002 Protocol</u>	COMMENTS
				CMNI if the pilot is designated by an authority and therefore cannot be freely selected from the list of the carriers servants or agents for whom is his responsible.
Claims and actions	<p><u>Art. 42 § 1</u> 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><u>Art. 43 § 1</u> Claims relating to the contract of carriage must be addressed in writing to the carrier against whom an action may be brought.</p> <p><u>Art. 43 § 2</u> A claim may be made by persons who have the right to bring an action against the carrier.</p>	<p><u>Art. 23 § 2</u> The carrier and the consignee may require an inspection of the condition and quantity of the goods on delivery in the presence of the two parties.</p> <p><u>Art. 23 § 3</u> Where the loss or damage to the goods is apparent, any reservation on the part of the consignee must be formulated in writing specifying the general nature of the damage, no later than the time of delivery, unless the consignee and the carrier have jointly checked the condition of the goods.</p> <p><u>Art. 23 § 4</u> Where the loss or damage to the goods is not apparent, any reservation on the part of the consignee must be notified in writing specifying the general nature of the damage, no later than 7 consecutive days from the time of delivery; in</p>	<p>CLNI 2012</p> <p><u>Art. 2</u> Subject to Articles 3 and 4, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability: (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins, waterways, locks, weirs, bridges and aids to navigation) occurring on board or in direct connection with the operation of the vessel or with salvage operations, and consequential loss resulting therefrom; (b) claims in respect of loss resulting from delay in the carriage of cargo, passengers or their luggage; (c) claims in respect of other loss resulting from infringement of rights other than contractual rights and occurring in direct connection with the operation of the vessel or with salvage or assistance operations;</p>	<p>CIM provides for the need of a formal report in which the damage or partial loss as well as the cause of it and the time of occurrence is stated (the CIT has developed a product for this report, the CIT20). The formal report only has to be drawn up in case of damage or partial loss to the goods. The formal report in cases of damage or partial loss is the first step for the consignor or consignee in their assertion of claims. In case of loss or damage of the goods or delay in delivery CIM provides for detailed procedural provisions, including against which carrier in case of a transport chain, the person entitled can claim.</p> <p>Under the CMNI, the consignee must make a reservation when the goods are apparently lost or damaged, except in case of total loss. The reservation must be made in writing (see article 1 § 8 CMNI)</p>

Regime	<u>COTIF / CIM</u>	<u>CMNI</u>	<u>CLNI (2012)</u> <u>Athens Convention including the</u> <u>2002 Protocol</u>	COMMENTS
	<p>Art. 46 § 1 Subject to §§ 3 and 4 actions based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred. § 2 When, in the case of carriage performed by successive carriers, the carrier who must deliver the goods is entered with his consent on the consignment note, an action may be brought against him in accordance with § 1 even if he has received neither the goods nor the consignment note. § 3 An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected. § 4 An action in respect of cash on delivery payments may be brought only against the carrier who has taken over the goods at the place of consignment. § 6 To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.</p>	<p>such case, the injured party shall show that the damage was caused while the goods were in the charge of the carrier.</p> <p>Art. 23 § 5 No compensation shall be payable for damage resulting from delay in delivery except when the consignee can prove that he gave notice of the delay to the carrier within 21 consecutive days following delivery of the goods and that this notice reached the carrier.</p> <p>Art. 29 § 4 The law of the State where the goods are located governs the real guarantee granted to the carrier for claims set out in article 10, paragraph 1.</p>	<p>(d) claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board the vessel; (e) claims in respect of the removal, destruction or rendering harmless of the cargo of the vessel; (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.</p> <p>Art. 3 § 1 The rules of the present Convention shall not apply to: (a) claims for assistance or salvage, including, if applicable, special compensation relating to salvage operations in respect of a vessel which in itself or its cargo threatened to cause damage to the environment; (b) claims for contributions in general average; (c) claims subject to any international convention or national legislation governing or prohibiting</p>	<p><i>and specify the amount of the goods lost and/or the type of damage to the goods.</i></p> <p><i>In comparison to CIM, the reservation that is to be made under CMNI (Art. 23 § 3) is more flexible. CIM with its formal report still dates back to the time of the state-owned railways and the old provision of CIM in 1980.</i></p> <p><i>In case of delay in delivery of the goods, the CMNI provides for a 21-day-notification period, to be given by the consignee, orally or even by raising the claims for delay in delivery.</i></p> <p><i>Under Art. 47 § 1 c) CIM the person entitled has an almost 3times longer period (60 days) to raise a claim. This longer period under CIM may be explained that in comparison to CMNI, the person entitled may raise his claims only according to the stricter and more complicated procedures under Art. 43 CIM or Art. 44 CIM.</i></p> <p><i>Article 29 § 4 CMNI refers to the “real guarantee”, which is the</i></p>

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	<p>§ 7 If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against any one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.</p>		<p>limitation of liability for nuclear damage; (d) claims against the owner of a nuclear vessel for nuclear damage; (e) claims by servants of the vessel owner or salvor whose duties are connected with the vessel or with the salvage or assistance operations, including claims of their heirs, dependants or other persons entitled to make such claims if, under the law governing the contract of service between the vessel owner or salvor and such servants, the vessel owner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that calculated in accordance with Article 6 or, for claims within the meaning of Article 7, to an amount greater than the limit of liability calculated in accordance with Article 7.</p> <p>Art. 4 Person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or</p>	<p><i>carrier's lien over the goods. This quite unusual provision of international private law clarifies the law applicable for the carrier's right on the goods as a security for his claims.</i></p> <p><i>Under CIM no such a provision is to be found so that the national law applies.</i></p> <p><i>Both the carrier and the actual carrier are entitled to claims against the shipper, even though the actual carrier has no contractual relationship with the shipper.</i></p>

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			recklessly and with knowledge that such loss would probably result. Art. 5 Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.	
Period of limitation ; Starting point of the term of limitation	<p><u>Period of limitation</u> 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</p>	<p><u>Period of limitation and starting point</u> Art. 24 § 1 All actions arising out of a contract governed by this Convention shall be time-barred after one year commencing from the day when the goods were, or should have been, delivered to the consignee. The day on which the limitation period commences is not included in the period.</p> <p>Art. 24 § 2 The person against whom an action is instituted may at any time during the limitation period extend that period by a declaration in writing to the injured party. This period may be</p>		<p><i>The basic limitation under the CIM is one year. There are also extended periods mentioned under Art. 48 § 1 lit. a) to d), for instance, two years in case of wrongful behaviour of the carrier (act or omission with intent to cause loss, damage, or where these occurred due to reckless behaviour of the carrier).</i></p> <p><i>The basic limitation under the CMNI is also one year. The limitation period can be extended by one or more written declarations and there is no cap on the amount of time of the further extensions.</i></p>

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	<p>recklessly and with knowledge that such loss or damage would probably result; d) based on one of the contracts of carriage prior to the reconsignment 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. 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-</p>	<p>further extended by one or more further declarations.</p> <p>Art. 24 § 4 Any action for indemnity by a person held liable under this Convention may be instituted even after the expiry of the limitation period provided for in paragraphs 1 and 2 of the present article, if proceedings are instituted within a period of 90 days commencing from the day on which the person instituting the action has settled the claim or has been served with process, or if proceedings are instituted within a longer period as provided by the law of the State where proceedings are instituted.</p> <p>Art. 24 § 5 A right of action which has become barred by lapse of time may not be exercised by way of counter-claim or set-off.</p>		<p><i>In contrast to this regulation under CMNI, CIM explicitly specifies different cases in which the period shall be extended to two years. In addition, Article 5 CIM makes it possible to extend the carrier's obligations and thus, in addition to the cases of Article 48 § 1 (a-d) of CIM, to allow other or longer limitation periods to the detriment of the carrier.</i></p> <p><i>Under the CMNI, a person held responsible may turn to the recourse debtor to pass on liability (e.g. contractual-carrier vs sub-carrier). Recourse claims must be instituted within a period of 90 days, commencing on the day on which the person bringing the recourse claim has settled the principal claim. Under CIM no such particular provision referring to the limitation of recourse claims is foreseen. This kind of regulation is stipulated in the Agreement concerning the Relationships between Carriers in respect of International</i></p>

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	claim or relied upon by way of exception.			<i>Freight Traffic by Rail (AIM – a CIT product¹⁴) whereas the expiry of the right to allocate between the carriers is stipulated under point 3.3.9</i>
Suspension of the period of limitation; Recommendation of the period of limitation	<p><u>Suspension</u> Art. 48 § 3 The period of limitation shall be suspended by a claim in writing in accordance with Art. 43 (...).</p> <p>Art. 48 § 5. Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.</p> <p><u>Recommencement</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</p>	<p>Art. 24 § 3 The suspension and interruption of the limitation period are governed by the law of the State applicable to the contract of carriage. The filing of a claim in proceedings to apportion limited liability for all claims arising from an event having led to damage shall interrupt the limitation.</p>		<p><i>Under CIM, the period of limitation may be suspended by means of a written claim (Article 48 § 3 CIM).</i></p> <p><i>In addition, CIM refers to national law for any suspension or interruption of periods of limitation (Article 48 § 5 CIM).</i></p> <p><i>Recommencement of the period of limitation is provided for in CIM: since the wording of Art. 48 § 3 CIM explicitly mentions that the period of limitation is suspended until the day (...).</i></p> <p><i>Under CMNI, suspension and interruption of the period of limitation is determined by the national law which applies to the contract of carriage. The terms suspension and interruption are misleading and they both cannot amount to one and the same (a period time that does not</i></p>

¹⁴ The AIM of the CIT (Agreement concerning the Relationships between Carriers in respect of International Freight Traffic by Rail) governs the standard instructions for calculating and sharing compensation between successive carriers. The AIM is available at <https://www.cit-rail.org/en/freight-traffic/agreements/>.

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	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>counts). Therefore, this includes the recommencement of the period of limitation that is also determined by national law.</p> <p>The legal consequences for future legal action, arising from the time limitations in the COTIF/CIM and CMNI, are based on national law.</p>
Right of recourse	<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:</p> <p>a) the carrier who has caused the loss or damage shall be solely liable for it;</p> <p>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);</p> <p>c) if it cannot be proved which of the carriers has caused the loss or</p>		<p><u>CLNI 2012</u> Art. 2 § 2 Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims under paragraph 1 (d), (e) and (f) shall not be subject to limitation of liability in so far as they relate to remuneration under a contract with the person liable.</p>	<p>The CIM specifically regulates the procedure of recourse between the different carriers in a “carriage chain”.</p> <p>There is no provision regulating the recourse between different carriers in the CMNI. Rather, a person held responsible under the CMNI provisions may turn to the recourse debtor to pass on liability.</p>

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	<p>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>§ 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</p> <p>§ 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</p>			

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	<p>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 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>			

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	<p>§ 6. Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.</p> <p>Art. 52 The carriers may conclude agreements which derogate from Articles 49 and 50.</p>			<p><i>According to Art. 52 CIM the carriers may conclude agreements which derogate from Articles 49 and 50. A lot of them have done so by joining the CIT Agreement concerning the Relationships between Carriers in respect of International Freight Traffic by Rail (AIM).</i></p>
<p>Forum and Arbitration</p>	<p>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.</p> <p>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</p> <p>b) the place where the goods were taken over by the carrier or the place designated for delivery is situated.</p>			<p>CIM allows 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 competent court in that Member State. CIM does not offer the possibility to establish an arbitration clause for legal disputes arising from the contract of carriage. The parties are however free to agree to submit their dispute to arbitration as a clause in the contract of carriage confers</p>

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	<p>Other courts or tribunals may not be seized.</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><i>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.</i></p> <p>CMNI does not give any jurisdiction. In addition, no arbitration clause is provided in the CMNI.</p>



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