

NEUTRALIZATION OF CMR DOCUMENTS

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Abstract

In 1956, there was an important step in international road freight transport. The CMR Convention, the main purpose of which was to unify the rules for the international transport of goods and thereby promote the development of international trade, was concluded. From a practical point of view, this is of great importance to both carriers and transporters. Similarly, this Convention describes the most important document for the carriage of goods and that is the consignment note CMR. In recent times, the term neutralization has been used in conjunction with this document in transport. We want to clarify the importance of this word in transport. The aim is also to find out to what extent carriers have real experience with CMR neutralization and when transporting what kind of goods the most frequent neutralization of documents is used. The purpose of this contribution is to explain what the term neutralization in transport means, because there is no legal regulation or norm to define it. This term is used mainly in chemistry. Furthermore, we would like to verify the hypothesis that the neutralization of consignment note CMR is actually used in international road freight transport and whether neutralization is only used for a particular type of goods, such as electronics. To verify the hypotheses we conducted a survey at the carriers.

Keywords: CMR convention, contract, transport, carriage, neutralization

1. Introduction

Developments in the history of human society are closely linked to the exchange of goods and thus to the development of transport. Transport has become an important need for humanity and is also a prerequisite for the operation of international trade. Within the EU, road transport has gradually gained a dominant position, especially at the expense of railways. Reasons are many, but the most important are the quality and dense road network within the EU, flexibility, speed, convenience, adaptability and other [6,12]. Goods may be transported in international trade only on the basis of the conclusion of a transport contract. The conclusion of a contract for carriage for international carriage would be considerably more complicated if the CMR Convention were not introduced [3]. In these circumstances,

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the carrier would have to know the national regulations of the countries in which he would realize the transport. Fortunately, in 1956 Geneva concluded the CMR Convention for carriers, the purpose of which is to standardize the conditions governing the contract for the carriage of goods in the cross-border transport of goods. The application of the rules contained in the CMR Convention applies only to separate transport contracts, not to forwarding and similar contracts. The particular contract of carriage shall be governed by the Convention only if all the conditions laid down in the Convention are fulfilled [7,15]. An important role in the international transport of goods has the consignment note CMR. It is proof of the conclusion of a transport contract and at the same time it is a proof of receipt of the shipment by the carrier. In recent years in the transport sector the term 'neutralization of consignment note CMR' has often been found. The purpose of this contribution is to explain what the term neutralization in transport means, because there is no legal regulation or norm to define it. This term is used mainly in chemistry. Furthermore, we would like to verify the hypothesis that the neutralization of consignment note CMR is actually used in international road freight transport and whether neutralization is only used for a particular type of goods, such as electronics. To verify the hypotheses we conducted a survey at the carriers.

2. Analysis of the current state

The conclusion of a contract for international carriage would be considerably more complicated for the carrier in the absence of the CMR Convention because carriers would have to know all the national transport regulations of the countries in which they would want to transport the goods. Differences in legislation across countries and their inconsistent interpretation would result in misunderstandings in the conclusion of contracts, including claims on the carrier. For that reason, the CMR Convention (Convention on the Contract for the International Carriage of Goods by Road.) was concluded in Geneva on 19 May 1956 [17]. The basic purpose of this Convention is to unify the rules for international road transport, thereby promoting the development of international trade. From a practical point of view, this is very important to both carriers and transporters, because if such a convention did not exist, everything would be governed by national regulations [21]. In 1978, a Protocol to the Convention, which governed Article 23 on compensation for damages, was signed in Geneva. In 2008, the Convention was supplemented by an Additional Protocol, the addendum covering the electronic consignment note [13].

International carriage is considered to be carriage where the place of loading is in another country as the place of unloading. In order to apply the CMR Convention to the International Carriage of Goods, it must be either the place of loading or the place of unloading in the State signatory to the CMR Convention [22]. There are three exceptions where it is not possible to conclude a transport contract under the CMR Convention even though it is an international carriage. The Convention does not apply to the transport of postal items, dead persons and furniture removal. The main reason why these shipments cannot be transported under the CMR Convention is that we cannot objectively determine the value of the shipment and thus identify the carrier's liability when transported. The Convention has been ratified by individual European countries, but non-European countries are also

contracting parties. Currently, the CMR Convention has been signed by 55 countries, of which only 44 countries have ratified the Protocol to the Convention (Fig.1) [14].



Fig. 1. Contracting parties of Convention CMR

Source: UNECE

The CMR Convention regulates the rules, rights, obligations and responsibilities of the carrier and the transporter, regulates the conclusion and realization of transport contracts as well as the procedures for damages. It describes the most important document in the international transport of goods, and that is the consignment note CMR [5]. This printed matter is an official document that has a standardized form and is usually written in two languages. The consignment note shall be made out in three original copies signed by the consignor and the carrier. Where permitted by the law of the country in which the consignment note is issued, such signatures may be printed or replaced by the stamps of the consignor and the carrier. The first red letter is intended for the sender and is a proof to the sender that the goods have been handed over to the carrier for transport. The second blue letter is intended for the consignee of the goods to know how much goods to take from the carrier. The third green letter is intended for the carrier, it is also a document confirming that the goods were handed over to the consignee. The consignment note shall be, unless the contrary is proved, a credible proof of the conclusion and content of the contract of carriage and the taking over of the consignment by the carrier [2]. If the consignment note does not contain a statement of reasons for the carrier, it is reasonable to assume that the consignment and its packaging were in good apparent condition at the time of receipt and that the number, the marks and the numbers corresponded to the particulars in the consignment note [20]. The consignment note shall contain the following particulars:

- The date of the consignment note and the place at which it is made out;
- The name and address of the sender;

- The name and address of the carrier;
- The place and the date of taking over of the goods and the place designated for delivery;
- The name and address of the consignee;
- The description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognized description;
- The number of packages and their special marks and numbers;
- The gross weight of the goods or their quantity otherwise expressed;
- Charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);
- The requisite instructions for Customs and other formalities;
- A statement that the carriage is subject, notwithstanding any clause to the contrary, to the provisions of this Convention [23].

The carrier's liability begins when the goods are taken over and ends when the goods are delivered to the recipient. The carrier is responsible for damaging or losing the shipment during shipment and also for exceeding the delivery time. A carrier under the provisions of the CMR Convention is obliged to compensate for the total or partial loss of the shipment that arises from the moment of its takeover to the transport until its issue [4]. The refund is calculated from the value of the shipment at the place and time it is taken over for shipment. The value of the goods shall be fixed according to the commodity exchange price or, if there is no such price, according to the current market price or, if there is no commodity exchange price or current market price, by reference to normal value of goods of the same kind and quality. Compensation shall not, however, exceed 25 francs per kilogram of gross weight short. "Franc" means the gold franc weighing 10/31 of a gramme and being of millesimal fineness 900. This limitation of liability is currently in force in the eleven countries that have not ratified the CMR Protocol. The remaining countries have significantly reduced the liability of carriers because the gold franc is replaced by a Special Drawing Rights (SDR). The carrier is required to indemnify the owner of the goods transported in the amount of SDR 8.33 per kilogram of damaged, destroyed or lost goods. Particular value depends on the exchange rate of SDR and EUR. In addition, the carrier must also pay for the carriage charges, Customs duties and other charges associated with transport. This value is covered by carrier liability insurance. However, if the price of the shipment or a particular interest in delivery is stated in the consignment note CMR, in this case the carrier shall guarantee the full value of the goods so specified. In the event of complete loss of the shipment, the carrier must pay the full value of the goods as well as the import, duty, VAT, excise duties, etc. in this case. If this value is higher than the sum of the carrier's insurance coverage under the Convention CMR, the carrier should insure such goods. This applies especially to light and expensive goods. If the delivery time is exceeded and the consignee proves that the damage has arisen for this reason, the carrier is liable to pay the damage only up to the amount of the import [9,16]. This analysis confirms that for international road transport for the carrier and the transporter the Convention CMR is the important legal norm. The consignment note CMR is a valid document for both parties - the carrier and the transport. The consignment note CMR is also a valid document for third parties, customs offices, insurance companies, etc. For this reason, it is necessary

to further consider whether it is possible under the current rules to neutralize the CMR consignment note and whether the neutralization of the consignment note CMR does not jeopardize the functionality of the existing system.

3. Neutralization of the consignment note CMR

Document neutralization is a process known only to the transport sector. The authors of this post have failed to get the definition of this term in any legislation or standards. Nevertheless, this term in road freight has been known and used for some years now. The word neutralization has several meanings. In general, it also means cancelling the effect. In the case of transport, neutralization means the exchange of original consignment notes or transport documents with other consignment notes or transport documents. It is therefore a revocation of the validity of the first consignment note [12]. Neutralization of transport documents is in most cases linked to illegal logistics activity called "parallel trade". Parallel trade is defined as a trade in products that takes place outside official distribution and is created by a particular company. Through their own distribution, companies can cause price differences in different countries, exploiting national differences in consumer behaviour [11]. Parallel merchants buy products in countries where they sell them at lower prices and then sell them in countries with a higher price. The product is not forged but imported from the country without the permission of the owner of the intellectual property [19]. The neutralization of consignment note in the parallel trade can be explained in the following figure.

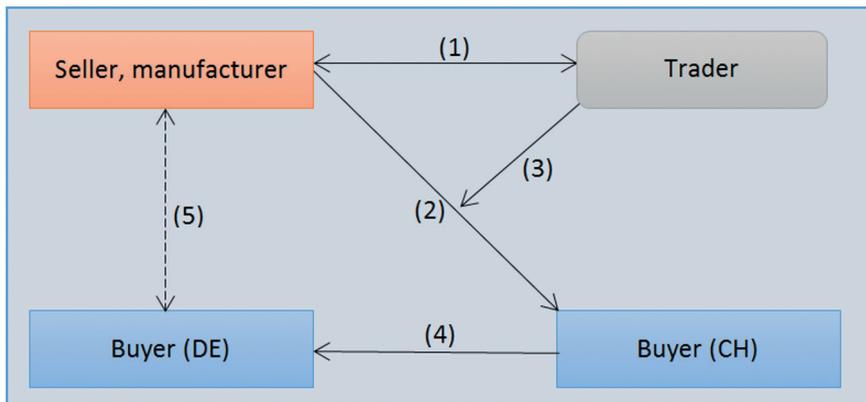


Fig. 2 Scheme of neutralization CMR at parallel trade

Source: processed by authors

(1) The trader agrees with the seller (manufacturer) that he will distribute his product to a country where his product is not currently sold (for example Switzerland) if he is offered a lower price than his original sale price. Lower sales price because of promotion in the

new market. (2) The CMR consignment note is written, where as a consignor is mentioned the manufacturer and as the buyer is listed company in Switzerland. (3) After the goods begin to be transported, the driver receives a command to neutralization CMR. He stops the vehicle for example at the gas station and neutralizes the CMR consignment note. (4) This consignment note lists Switzerland company as the consignor and the recipient is a German company. The trader sells these goods in Germany at a much higher price than the one he bought, (5) while the manufacturer does not know that his goods are sold in Germany, where he already sells these goods [10].

The purpose of neutralizing the consignment note should be to ensure business secrecy, where the trader wants to prevent the recipient from knowing the manufacturer and purchasing terms [1]. On the basis of theoretical research the following can be identified reasons for neutralizing the consignment note.

Reason A – when the trader does not want that the manufacturer finds out who is buying his product

Example: The driver loads the goods in Germany (Hannover) and during the loading process he lists the consignment note CMR according to which he transports goods from Hannover to Hamburg. The manufacturer believes that the goods will appear in Hamburg. After a while, however, the driver arrives at the gas station and lists new documents stating that the product was loaded in Hanover but the recipient is in Paris.

Reason B – when the trader does not want the customer to know where the goods are produced

Example: The driver handles the goods in Hanover and the consignment note CMR is sent to the consignee's warehouse where it is written that it is a product loaded in Marseille and it is intended for the consignee in Paris. Meanwhile, in the case of roadside checks, the driver writes consignment note CMR confirming that he is carrying the goods loaded in Hanover and the destination is Paris. However, the final customer will receive the documents showing that the product was loaded in Marseille. Here we also encounter inconvenience for the driver because the papers say that when he travelled from Marseilles to Paris he carried out cabotage and must therefore leave the territory of France [8]. If documents were true, the driver could do two more cabotage operations in France [18].

Reason C – Nobody knows anything, that is, the manufacturer does not know where the goods are and the final customer does not know where the product comes from.

Example: The driver handles goods in Hanover and says that he will go to Hamburg. According to these facts, the documents are stored in the warehouse of dispatch. Then the driver goes to the gas station and he writes new the consignment note CMR, according to which he loaded the goods in Hanover and he will carry it to Paris. Subsequently, before approaching Paris, he writes a new CMR, according to which the goods were loaded in

Marseille and delivered to Paris. In this situation, the manufacturer believes that the goods arrived in Hamburg and the customer is convinced that the goods were loaded in Marseille.

On the basis of this, it can be argued that there are up to three ways of neutralizing transport documents. We conducted our own research in the next part which is based on the theoretical identification of the problem of neutralization of transport documents.

4. Own research

An electronic questionnaire was created in Google's questionnaire, which was used to get information about the use of CMR neutralization. In order to find out if the questions are sufficiently clear, its pre-test was carried out. Subsequently, the questionnaire was published in Slovak and Czech discussion forums, further distributed through social networks and added to groups whose members are drivers (carriers). The survey was conducted in two terms, namely in December 2018 and January 2019. The questionnaire contained two questions. The purpose of the first question was to find out whether carriers (drivers) have experience with CMR neutralization. The second question was aimed at identifying the type of goods in which the consignment note CMR is most neutralized. The questionnaire survey was conducted to find out basic information on the use of CMR neutralization in practice, and for what kind of goods the CMR neutralization is most often performed. The survey was attended by hauliers carrying out the transport in the various countries of the world.

Experience with CMR neutralization

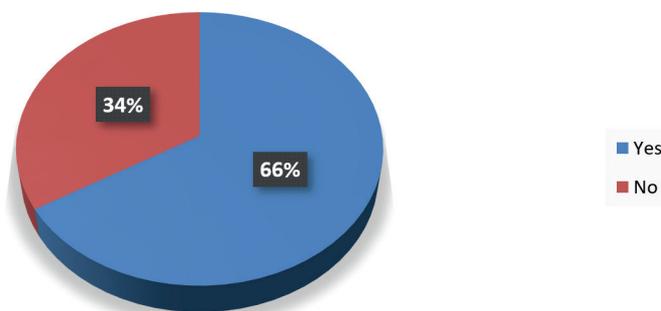


Fig. 3 The graph showing carrier experience with neutralization of document CMR

Source: processed by authors

The survey revealed information that confirms the assumption that carriers have the experience of neutralizing the consignment note CMR. The survey results presented in Figure 3 show that up to 66% of the interviewed carriers (drivers) already have neutralization

experiences, 34% of the interviewed carriers have no experience or have never hear the term of CMR neutralization. Although there is no literature describing the neutralization of the consignment note CMR, it should be noted that carriers are normally meeting with these practices.

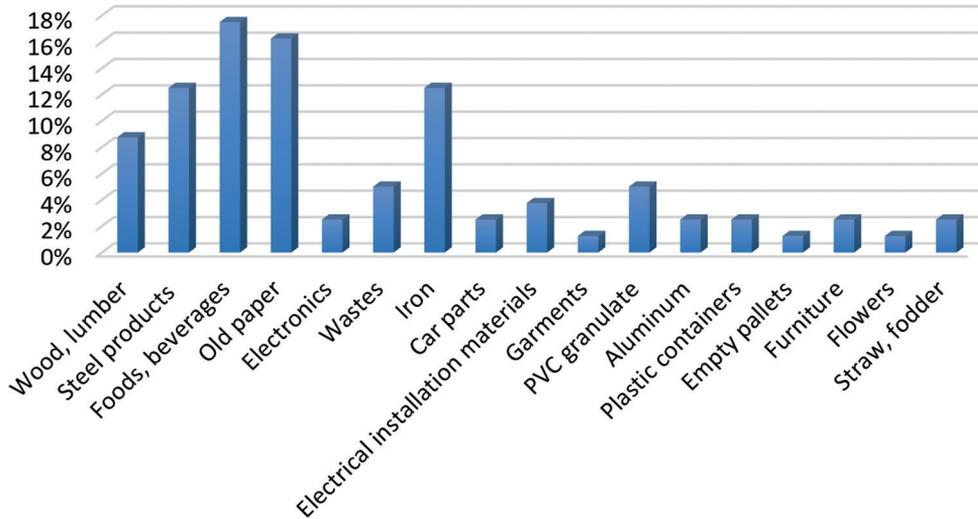


Fig. 4 Carried goods at neutralization of CMR

Source: processed by authors

Another part of the research dealt with the question of what goods are usually transported when the consignor or consignee requires the neutralization of transport documents. The results of the survey are shown in Figure 4, which describes the different categories of goods that carriers have reported as transported goods, which were entered in the consignment note CMR in block 9 - Nature of the goods. It is possible to note that documents are neutralized for different types of goods. Neutralization of documents therefore does not apply to only specific transported goods. However, this survey shows that most neutralization of documents is associated with the transport of food and beverages, which represents up to 18% of the total quantity of material transported, the old paper 16% and iron 13%. Conversely, the transport documents are least neutralized for garments, empty pallets and flowers.

5. Conclusion

The CMR Convention, which regulates the international road freight transport contracts, is today the most important tool for distributing responsibility between the carrier and the transport customer. The CMR Convention also defines the credible document that is

necessary for carrying out the transport and which is proof of the implementation of the transport not only for the contracting parties but also for third parties. The fact is that there is no credible research about the neutralization of transport documents and therefore the aim of contribution is to confirm the hypothesis that transport documents are actually neutralized in practice. The authors' research confirmed that the transport documents are neutralized in practice. Up to 66% of the surveyed carriers confirmed that they neutralized the transport documents at the request of the transport customer. Further research shows that neutralization does not only apply to the transport of a particular type of goods because the transport documents are neutralized for various types of goods. However, we can say that our survey shows that most documents are neutralized in the transportation of food, beverages, old paper and iron. By neutralizing the credible document recognized by the contracting parties the document becomes unreliable and dubious. The practice of neutralizing transport documents may cause instability of contract system in the international road transport as well as the instability of carrier liability. It is also necessary to address research into the impact of neutralization of transport documents on the validity of insurance contracts as well as on the vision of future acceptance of consignment notes CMR.

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