

## E-CMR as a basic condition on fulfillment of obligations under agreement for international carriage of goods by road

Rano ISMAILOVA<sup>1</sup>

University of World Economy and Diplomacy

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### ABSTRACT

The article analyzes the main conditions for the fulfillment of obligations under the contract for the international carriage of goods by road. In addition, the article discusses the role and place of the CMR as evidence of the conclusion of this type of contract, as well as the consequences of the Republic of Uzbekistan joining the e-CMR Additional Protocol and the introduction of this innovation in the process of international transportation of goods by road.

The article draws conclusions about the position of the consignee in the contract for the carriage of goods, as well as his responsibility under the contract for the international carriage of goods by road, and it is also determined that the Contract for international carriage serves as a legal basis for the financial liability of the parties in case of non-fulfillment or improper fulfillment of obligations.

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## Электронная накладная как основное условие об исполнении обязательств по договору международной перевозки грузов автомобильным транспортом

### АННОТАЦИЯ

#### *Ключевые слова:*

Договор международной  
перевозки грузов

автомобильным

транспортом

Электронная накладная

Ответственность

Основные условия об исполнении обязательств по договору международной перевозки грузов автомобильным транспортом изучаются и анализируются в статье. Кроме того, в статье рассмотрены роль и место накладной как доказательства заключения данного вида договора, а также последствия присоединения Республики

<sup>1</sup> PhD student, University of World Economy and Diplomacy, Tashkent, Uzbekistan

E-mail: [r.fayzieva@mail.ru](mailto:r.fayzieva@mail.ru)

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Ненадлежащее  
исполнение.

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Узбекистан к Дополнительному протоколу КДПГ об электронной накладной и внедрения данного новшества в процесс международной перевозки грузов автомобильным транспортом.

В статье сделаны выводы о положении грузополучателя в договоре перевозки грузов, а также его ответственности по договору международной перевозки груза автомобильным транспортом, а также определено, что Договор международной перевозки служит правовой основой имущественной ответственности сторон при неисполнении или ненадлежащем исполнении обязательств.

## **INTRUDUCTION**

The right of the parties to enter into a contractual relationship and to define the terms of the contract is an integral part of personal freedom. As you know, citizens (individuals) and legal entities acquire and exercise their civil rights by their own will and in their interest. They are free to establish their rights and obligations on the basis of the contract and to determine any terms of the contract that do not contradict the legislation [1]. Like other freedoms, the freedom to enter into a contractual relationship is limited by other rights and statutory interests of the state.

Accurate and complete implementation of the terms of the contract plays an important role in the development of the state economy and improving the welfare of society [2]. This article examines the terms of the contract on the fulfillment of obligations for the international carriage of goods, in particular studies e-CMR as its main condition.

## **MATERIAL AND RESEARCH METHODS.**

The article used the methods of cognition identified by legal science and tested in practice. The work is based on the use of general scientific methods of dialectical, historical, formal-logical, systemic and comparative analysis. While preparation of data, a number of special methods were used, including statistical, structural and functional, modeling and forecasting methods.

## **RESULTS AND THEIR DISCUSSION.**

Transportation of goods cannot be carried out without prior agreement, because first of all, the contract is the legal basis for the liability between the carrier on the one hand and the consignor on the other. The article pays attention to this, in particular, in the Convention on the contract for the international carriage of goods by road.

Furthermore, the contract for international carriage serves as a legal basis for the financial liability of the parties in case of non-fulfillment or improper fulfillment of obligations related to the carriage. A feature of the legal regulation of transport relations is that civil and special transport legislation draws the greatest attention to the main contractor - the carrier, which is obvious, since the actual fulfillment of the obligation to transport goods depends on him. The division of responsibility between the carrier, the consignor and the consignee for non-preservation of goods and delay in their delivery can take place at the stages of both the conclusion and execution of the carriage contract. The grounds for the financial liability of the carrier's clientele could be the violations of the

rules in force for a specific type of transport for the delivery of goods for transportation, its packaging, timely receipt of goods at the destination, registration of shipping documents, etc. [3].

The contract for the international carriage of goods is confirmed by a special document. Transport conventions and agreements refer to them as a waybill, a carriage document, anything that keeps a record on the agreement of the upcoming transportation.

Article 9 of the Customs Code of the Republic of Uzbekistan contains a rule indicating that transport documents include a bill of lading, waybill or other document confirming the existence of a contract for the carriage of goods and accompanying them during such transportation [4].

An essential distinctive feature of transport documents confirming the conclusion of a contract for the international carriage of goods is the enshrinement in the conventions of the provision that their absence of transport documents, their incorrectness or loss does not affect either the existence or the validity of the contract of carriage (Article 4 of the Convention on the Contract for International carriage of goods by road (CMR) 1956 [5]).

In case of international carriage of goods, a set of additional documents required for crossing the border is attached to the document confirming the contract of carriage. These are documents presented to border, customs, sanitary and other official bodies performing administrative functions. Such documents include, in particular, a permit to travel through the territory of a foreign state, documents drawn up in accordance with customs regulations (invoice, shipping and packing lists and other documents that are used in the implementation of foreign trade and other activities to confirm transactions related to the movement of goods across the customs border [6]), documents required for passing sanitary and phytosanitary control and others. Mostly it is the consignor who prepares such documents and the carrier resolves all issues related to border crossing.

The conclusion of a contract for the carriage of goods in world practice can be made in the form of e-CMR or other documents considered by legislative acts, corresponding to the mean of transport used while transportation. However, according to the legislation of the Republic of Uzbekistan, only a written contract is the basis for the carriage of goods by road. A waybill is considered as a single document for all participants in the transport process, which is intended for writing off inventory items, accounting on the way of their movement, posting, warehouse, operational and accounting, as well as for payments for the transportation of goods and accounting for work performed [7]. For example, in the Convention on the contract for the international carriage of goods by road, in Article 4 of Chapter 3 it is noted that, the contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject the provisions of this Convention. [8]. At the same time, article 9 notes that the consignment note shall be prima facie evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier. If the consignment note contains no specific reservations by the carrier, it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note [9].

The opinions of some foreign scientists also agree that the waybill is undoubtedly proof of the conclusion of a contract of carriage, but in no case can be considered as the contract itself. For example, Bramwell [10] noted that, in his opinion, the consignment note is not a contract, it is a document reflecting the terms of delivery and transfer of goods, thus it can be considered as an excellent proof of the terms of the contract, but not the contract itself [11]. As noted by A.I. Khanov, an essential aspect of law enforcement practice in relation to CMR norms is the interpretation of the role of correct filling of the international consignment note. The international waybill is not a contract of carriage, but indicates the existence of such a contract [12]. Supporting the point of view of the abovementioned scientists, it should be noted that the invoice cannot be a contract, since it has a strictly defined structure, while the terms of the contract are determined in accordance with the parties.

With the development of digital technologies, the paper type of waybill began to be gradually replaced by an electronic one. According to the Decree of the President of the Republic of Uzbekistan No. PP-4842 of September 25, 2020 "On joining an international treaty" [13] the invoice provided for in the CMR, as well as any request, declaration, instruction, request, clause or other message related to the implementation of the contract transportation, to which the CMR applies, can be executed using electronic means of communication, while these documents must be signed with an electronic signature.

The International Road Transport Union identifies some of the key benefits to e-CMR:

- Lower costs, which means that handling costs can be up to three to four times less expensive, faster administration with reduced data entry, no paper handling, no fax/scan/letter exchanges, no paper archiving, etc. Faster invoicing and reduction of delivery and reception discrepancies are also among advantages of e-CMR;

- Greater transparency, namely data accuracy, control and monitoring of the shipment, real-time access to the information and proof of pick-up and delivery.

Because of its digital nature, e-CMR can also be easily integrated with other services used by transport companies, e.g. customs declaration or transport and fleet management services. By moving to an electronic format, the three parties involved in each shipment benefit from increased overall efficiency of logistics, resulting in increased economic competitiveness. A final benefit, is greater road safety, as e-CMR can be linked to eCall, a system for trucks that automatically dials emergency services in the event of a road traffic accident [14].

The contract of carriage has a number of legal features related to the peculiarities of the transport process. The rules on the carrier's liability for non-preservation of cargo are unilaterally imperative.

One should consider that the carrier's liability for non-fulfillment or improper fulfillment of the obligations assumed is limited, i.e. has an absolute or relative limit. Although article 14 of the Civil Code of the Republic of Uzbekistan states that a person whose right has been violated may demand full compensation for losses caused to him, if the law or agreement does not provide for compensation for losses in a smaller amount. In this case, losses are understood as expenses that a person whose right has been violated has made or will have to make to restore the violated right, loss or damage to his property (real damage), as well as lost income that this person would have received under normal conditions of civil turnover, if his right had not been violated (loss of profits).

Considering the provisions of the contract for the carriage of goods by road, it is necessary to take into account the fact that the contract must include measures for non-delivery, untimely delivery of vehicles, as well as for the supply of vehicles unsuitable for the carriage of goods specified in the contract, as well as failure to present, untimely presentation of cargo for transfer to the carrier. In addition, the issues of liability for the consignor's failure to use the delivered vehicles for reasons other than being unsuitable for transportation, as well as non-compliance with the established requirements and delay in the dispatch of vehicles as a result of untimely packing, labeling and other preparatory measures carried out by the consignor before the cargo is dispatched, are also important and should be reflected in the contract. For these violations, the parties have the right to provide for the payment of a fine, the payment of additional sums of money for the idle time of vehicles and the delay in their dispatch, compensation for damages.

It is the unavailability of liability that serves as a guarantor of compliance by the parties with legislation and the terms of the contract. Proving the carrier's liability under the contract for the carriage of goods by road is very ambiguous and complex, due to the specifics of legal regulation in this area. This fact hinders the normal development of economic legal relations between organizations and, accordingly, negatively affects the commodity market [15]. The parties have the right to establish measures of liability for other violations of the contract, and the more complete the list of measures of responsibility, the more protected the parties will be, because this will help to avoid many controversial points and, as a result, further legal costs.

The position of carriers engaged in road transportation today is very precarious due to the fact that they are not monopolists in their field, and therefore it is much easier for cargo owners to insist on their conditions, including the amount of liability for improper performance of the transportation contract. According to Art. 17 of the Convention "The carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery". Other types of violations, such as non-delivery, untimely delivery of vehicles, are not specified in the Convention. However, "... 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" [16]. Damage caused during the carriage of cargo or baggage in the event of its loss or shortage, shall be compensated by the carrier in the amount of the value of the lost or missing cargo or baggage. The comments to the Civil Code of the Republic of Uzbekistan note that the cost of cargo is determined based on its price, which is established depending on the types of transportation and transport according to the rules (methodology) approved by the authorized state body and on the basis of the principles of the relevant international conventions to which the Republic of Uzbekistan has joined [17].

As a result of a violation of obligations under the contract, the violator gets an additional obligation. This is consistent with the system of obligations and is a significant clarification of liability for violation of obligations, the fundamental provisions of the agreement on the provision of services, and especially on transportation, as well as special legislation, in particular the "Rules for the carriage of goods by road in the Republic of Uzbekistan" [18]. Moreover, the Rules differentiate negative consequences depending on the type and consequences of the violation.



As you know, at the final stage of the execution of the contract of carriage, the consignee has a considerable range of responsibilities that cannot and should not have a third party in whose favor the contract is concluded. As Tychinin S.V., Peresyypkin A.V. noted "the modern design of the contract for the carriage of goods no longer meets the needs of the time, the recognition of the consignee in the contract only as a third party is not justified and not acceptable" [19]. Taking into account modern economic realities, we believe that it is necessary to take a number of consistent steps towards reforming the contract for the carriage of goods and determining the position of the consignee in the contract for the carriage of goods.

### **CONCLUSION.**

Studying the contract for the international carriage of goods by road the author came to the following conclusions:

1. The contract of international carriage serves as a legal basis for the financial liability of the parties in case of non-fulfillment or improper fulfillment of obligations.
2. The contract for the international carriage of goods is confirmed by a special document, for transportation by road this document is a waybill.
3. The international waybill is not a contract of carriage, but it indicates the existence of such a contract. The waybill cannot be a contract in essence, since it has a strictly defined structure, while the terms of the contract are determined at the discretion of the parties.
4. The introduction of an electronic consignment note (e-CMR) in the Republic of Uzbekistan will contribute to a significant reduction in costs, as well as an increase in transparency and accuracy in transport of goods by road.
5. Determination of the position of the consignee in the contract for the carriage of goods, as well as his responsibility under the contract for the international carriage of goods should be at the center of legal science in this area.

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