

# F O R W A R D

Bringing Open AI into  
logistics insurance

How to avoid falling victim  
to a phantom hauler

EVER GIVEN leads to birth  
of new insurance

The transportation & logistics magazine of the GrECo Group | Summer 2023



***Navigating the Future***

*Shaping the Transportation & Logistics Landscape*



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## A Year in Review: The Transportation & Logistics Rollercoaster Ride

*You could be forgiven for not wanting to look back and reflect on 2022 – the year that brought us the war between Russia and Ukraine, stranded cargo ships, pirates, and trucker strikes.*

2022 proved a fast-paced rollercoaster ride for the transportation & logistics industry leaving many wishing they could get off! However, where there are challenges, there are lessons: there is still a lot to be learnt from all that 2022 threw at us.

### Is 2022 light at the end of the tunnel?

After the pandemic, 2022 was filled with the expectation that everything would return to normal across most areas of our lives. It was hoped there would be a light at the end of the tunnel after all the trials and tribulations of the Covid years. And, on the whole normality resumed, and in some cases, exceeded expectations.

Alas, it was not to be so for all! As some areas thrived, others floundered. Record-breaking sea freight rates crashed in the last quarter, reaching levels rarely seen before the pandemic. Whilst just twelve months ago, cargo liability insurance rates tied with turnover were a curse for freight forwarders, in 2023 they have suddenly become a blessing. However, the opposite was seen in road haulage operations: inflated fuel prices and labour costs resulted in a surge in trucker turnover. As a result, fleet insurance by license plate, offered by local insurers, has become very attractive in 2023.

### Russian war creates a minefield for the industry

Supply chain logistics media headlines throughout 2022 were dominated by political risk. The war in Ukraine changed everything for this sector. Even if most shippers were not directly involved, many began to fear that their precious goods would be confiscated whilst being transported through Russia.

The rail link between China and Europe, which goes through Russia and had once seemed a salvation for those fleeing rising sea freight prices, suddenly became a risky option: confiscation and other political risks are generally excluded from standard Institute Cargo Clauses. What's more, Institute War Clauses also offered little hope to the industry since they are only applicable to sea voyages.

As if that wasn't enough, the war in the East has had far wider-reaching consequences. The introduction of, and con-

tinuation of, sanction packages on Russia also means that any opportunity in the East amounts to the equivalent of running through a minefield. With this ongoing situation, paired with Russia destroying a large cargo airplane and the downfall of several major cargo airlines with operations in Russia, it is safe to say the industry was challenged in 2022 by a myriad of political risks, and will continue to be so for the foreseeable future.

### Troubles at sea

The year hasn't passed without a few declarations of general average. Evergreen Marine, the operator of the famous Ever Given that blocked the Suez Canal for a week, hit the news again when its cargo ship, the Ever Forward, ran aground on the muddy bottom of Chesapeake Bay and was stuck for a month. The knock-on effect for shippers and consignees with goods aboard the Ever Forward was not just one inconvenience: Those without cargo insurance also had to chip in and contribute towards the costs of the multiple rescue attempts to get the ship afloat again.

### Rocky start for finished vehicles logistics

The nightmares of the first quarter of 2022 saw many car carriers openly considering closing their operations. Thankfully, Christmas and New Year seemed to come early as freight rates hit all-time highs in July. We predict the celebrations will continue until the time comes to adjust cargo liability insurance premiums based on turnover. Many OEMs have continued exploiting cargo insurance to enforce total liability on car carriers by deviating from the CMR convention, giving you another reason to seek advice from your cargo liability insurers before signing that hard-negotiated tender in 2023.

### Waving goodbye to covid restrictions, strikes and pirates

As we waved goodbye to 2022, we breathed a huge sigh of relief! Sadly, with the ongoing war in Russia, overcapacity in the shipping industry, and drivers' shortage, it's unlikely the rest of 2023 will be any less of a rollercoaster for the transport, logistics, and insurance industry. If 2022 has taught us anything, it is to expect the unexpected this year and make sure you are properly insured to cover all eventualities!



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# Bringing Open AI Into Logistics Insurance

*There was a time in the not-too-distant past when self-driving cars, flying drones, and fridges that tell you to order fresh milk seemed mind-blowing, futuristic ideas. But with the meteoric rise of technology in our everyday lives, such fancies have quickly become old news.*

There was a time in the not-too-distant past where self-driving cars, flying drones, and fridges that tell you to order fresh milk seemed mind-blowing, futuristic ideas. But with the meteoric rise of technology in our everyday lives, such fancies have quickly become old news. The latest tech to take the world by storm is ChatGPT which gives us the ability to chat with AI. It's fresh, novel, and intriguing, and many believe it will leave many professions defunct as the world of work is automated even further. Through API-powered links and other implementations, this new open API platform has many capabilities and the media industry, for example, is already harnessing its powers to their advantage. For example, BuzzFeed recently signed a contract with ChatGPT to generate articles for its news site. It's time for the insurance industry to ask how ChatGPT can help with transport and logistics insurance. How can this novel new chatbot's capabilities help solve claims and advise on cargo insurance?

## Putting it to the test: What does an AI know about insurance?

Currently, actual insurance starts with a claim. Anyone can write a policy, but not everyone can solve a complex claim. Despite the importance of claims to the quality of service, it is usually seen as a cost by those involved in insurance. It means understaffed claims departments are pushed to the limits with piles of manual work. Can chat AI assist this critical insurance chain?

Let's establish the fundamental truths. The core of every claim is a successful interpretation of the applicable legal regime. In the EU, 42% of shipments are moved by road haulage. The CMR convention regulates the liability limits for cargo by road transport. When asked whether ChatGPT is familiar with the CMR convention for road haulage, the AI scored full marks, giving a succinct, and comprehensive summary of the convention.

The most daunting task of every claim manager is to reject unreasonable demands. You must be polite, precise, and get right to the point, avoiding fancy words like "conclusive actions." Can ChatGPT aid in writing such an email? We put it to the test again by telling it we had a claim invoice for a new vehicle damaged during the voyage, and that the claim was sent more than 12 months after the delivery date. We provided the AI with all the relevant details of the claim including the correct CMR convention article, and the vehicle details. We then asked it to write us an email of no more than 4,000 characters to dismiss the cargo claim.



Subject: Dismissal of Cargo Claim for Alfa Romeo Giulia with VIN 1234567891234568

Dear Company X, UAB,

I hope this email finds you in good health and spirits. I am writing to inform you about the dismissal of your cargo claim for the transportation of the Alfa Romeo Giulia with VIN 1234567891234568 from Italy to Germany.

As per the provisions of the CMR Convention, Article 31, Paragraph 1, Section a, claims for damages in relation to the carriage of goods by road must be made in writing within a year from the date of delivery. The delivery of the vehicle in question took place on 2021.10.01, and the invoice for repair costs was sent on 2022.11.10, which is more than a year later.

Therefore, I regret to inform you that your claim is time-barred and cannot be entertained. I kindly request you to understand that our company is bound by the provisions of the CMR Convention, and we cannot deviate from the same.

If you have any questions or require further clarification, please do not hesitate to contact me. I would be happy to assist you in any way possible.

Thank you for your understanding and I look forward to hearing from you soon.

Best regards,

[Your Name]

We continued to challenge Chat GPT: cargo clauses; the difference between ICC and German DTV clauses; the difference between ICC clauses B and C, and so on and so forth. Here ChatGPT did make a few mistakes but the more we asked questions, the better and better it got at providing accurate answers. After four or five exchanges, providing tighter, better thought-out questions, the AI provided accurate answers.

## The verdict: Can ChatGPT help the transport and logistics insurance industry?

In conclusion, yes, it seems with careful usage ChatGPT can help the insurance industry. Technological advancements are helping to automate manual work across the industry, and the Open AI platform ChatGPT is one of the elements which could prove to

be incredibly useful. It will save time and costs in the claims department so long as a professional enters the correct data and can direct the AI to the right article and convention. ChatGPT is good with the facts, turning them into stories, emails, letters, and documents; and it's also good at providing the user with options. However, it will not advise (yet!) on the final decision in a claims case, e.g., which cargo liability option to choose, but with careful use and rigorous checking of the answers, it certainly has the potential to help the insurance industry in the future. Watch this space!



Chat GPT



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## Understanding Liability Limitations under the CMR Convention

According to the provisions of the CMR Convention, the liability of the carrier for the loss of goods is limited to 8.33 Special Drawing Rights (SDRs) per kilogram of gross weight. In the case of your lost cargo with a weight of 500 kg, the maximum liability of the hauler would be 4,165 SDRs, which is equivalent to approximately 5,695 EUR at the current exchange rate. It is important to note that the carrier's liability is limited as per the provisions of the CMR Convention, and the consignor may recover a higher amount if it can prove that the carrier was at fault or acted negligently. In such cases, the carrier may be held liable for the full value of the goods.

It is also advisable to have adequate insurance coverage for the goods being transported, as this would provide an additional layer of protection in case of loss or damage during transit. In conclusion, the maximum liability of the hauler for your lost cargo is limited to 4,165 SDRs or approximately 5,695 EUR, as per the provisions of the CMR Convention.

## More Creative Thinking to Solve Complex Problems

*“To achieve the possible, we must attempt  
the impossible again and again.”*  
Hermann Hesse

Is there a willingness in today's Europe to think about the seemingly impossible once again to create new possibilities? The necessity certainly exists as the increase in crises, wars and catastrophes calls for more creative thinking to help solve complex problems. Corporate intellectual property, international networks of think tanks, knowledge pools using databases and digital platforms, and if-then functional processes on a meta-level, are just some of the buzzwords that spring to mind.

### EU: New Horizons

“Horizon Europe 22 – 27” is the European Innovation Council's ambitious EU programme to strengthen science and technology through research funding, aiming at a competitive position on the world market while taking climate protection into account. Some 95 billion Euros have been earmarked for this EU-wide research and innovation programme.

Given the necessity to rethink the future – including environmental protection – and better safeguard it against new crises, this is a drop in the ocean. To name a reference value: Europe's NATO countries have budgeted about 400 billion Euros for military expenditure. Looking at the “Horizon Europe” expenditure, every EU citizen contributes an amount of about 59 cents every day.

However, to develop fully sustainable solutions in research and innovation, a tenfold investment is required, along with a paradigm shift. The first steps should start with primary school children as they will be the main decision-makers in thirty years' time. They should be motivated not to wait for outside help, but to act themselves. What is called for are more playful methods of school education to convey problem-solving skills, the promotion of tax-deductible university and non-university research, and our will to elect politicians who are willing to make unpopular decisions. When it comes to constructively meeting challenges, many parts of our society are helpless. A recent tweet read “Who hates this government as much as I do?” – many commented that their hate was even greater. Only a few replied by saying something like “Go into politics and show us that you can do better”.

### Supply chain disruptions

All over the world, uncertainty prevails. Disruption of local supply chains in 2015 cost Europe about 50 billion

Euros. Since then, economic turbulence due to trade restrictions and protectionism, driven, among other things, by increasing geopolitical instability has been exacerbated and will surely cost many times more each year than back in 2015.

The impact of just one factor becomes visible by looking at soaring container freight rates since the pandemic: These rates have, at times, increased tenfold. Reasons being a global container shortage and disruptions in subsequent shipping caused by temporary port closures in China, for example. Given the sustained high container freight rates, we may notice a shift in the flow of goods. Those goods that were cheaply produced in China, yet were subject to costly transport, could perhaps be produced in Europe and cost less in the long run – provided the required raw materials and resources are readily available. Air pollution due to goods transport en route to their finishing processes could also be reduced at the same time.

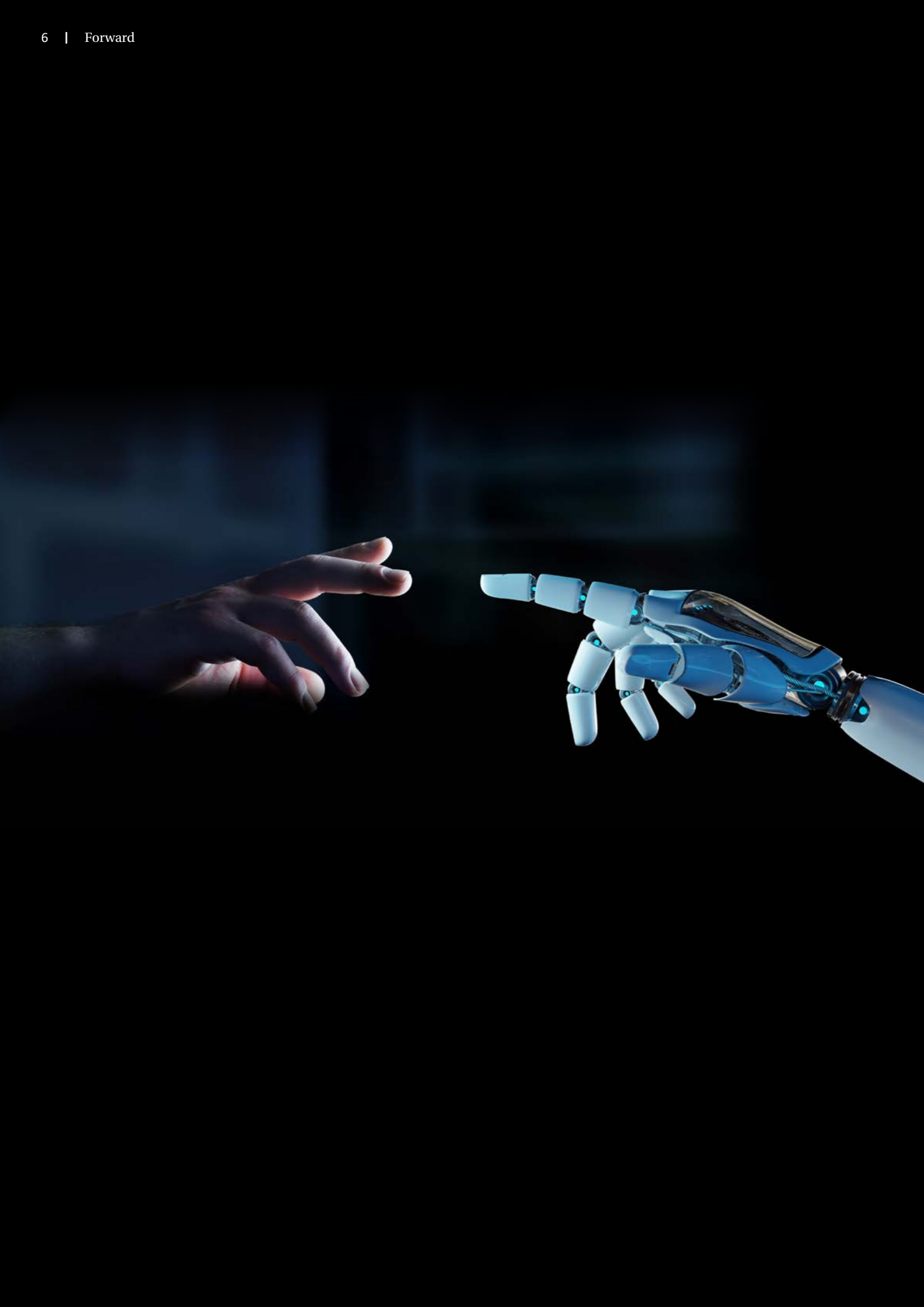
Disrupted supply chains also have a negative impact on JIT deliveries, resulting in production downtimes and financial losses. Some businesses have responded by reactivating vacant storage facilities or building new ones to ensure they have an adequate supply of raw materials on hand for processing.

### Technologies of the future

Action must be taken in the face of these turbulences while exploiting every possibility provided by available instruments: RPA, IOT, analytics and digital collaboration. Managers must keep their fingers on the pulse and implement the next steps in line with the current digital and technological developments, including blockchains and other open sources, smart logistics and Physical Internet, drones, connected cars including self-driving vehicles, e.g., van and straddle carriers used in port areas. Today's key decision-makers will have to deal with the transport technologies of the future, such as platooning or hyperloops, and follow in the footsteps of Leonardo da Vinci in their thinking.

### Transcontinental infrastructure networks.

China and many other states as well as institutional investors have poured large sums of money into the







New Silk Road – on land (Silk Road Economic Belt) and sea (Maritime Silk Road) – enabling the establishment of new intercontinental trade and infrastructure networks between China and other Asian countries, Africa, and Europe. Once completed, the project will have an impact on more than half of the world's population and about 40% of global trade.

The speed with which the project has moved forward over the last 10 years since its inception is best demonstrated by a small-scale example showing the increase in land transport: in 2013 80 container trains from the China Railway Express Co. used the New Silk Road to ship to Europe, in 2020 this number grew to 12,400!

China also invests heavily in European infrastructure, especially in ports in the South, Piraeus, or Trieste. Travelling times to these ports are shorter than to those situated along the North Sea. Given recent geopolitical upheavals – and looking at the situation with Russia and resultant traffic and transport complications – warnings are increasingly raised against an over-dependency on China. There is also criticism being levelled against the fact that countries and communities receiving financial support may fall into a debt trap. The EU is also troubled by bilateral agreements between China and European countries. This could accelerate a split within the EU.

What could be more appropriate for the EU than to redirect the focus onto itself?

In the medium and long term, near-shoring instead of offshoring could be a solution. Despite differing views on various issues in individual countries, Europe has some undeniable advantages over other states and other continents: less cultural and work ethical differences, easier ways of collaboration due to geographical proximity, hardly any differences in time zones, shorter travel distances, etc.

With Trans-European Networks (TEN) accelerating developments and shaping the European domestic markets, the EU significantly contributes to economic and social solidarity. Streamlining the infrastructure of transport systems through the Trans-European Transport Network (TEN-T) as well as the energy and telecommunication sectors are its key drivers.

TEN-T aims to implement and develop a Europe-wide network of railway lines, roads, inland waterways, maritime shipping routes, ports, airports, and railroad terminals, whilst improving their environmental compatibility. The ultimate objective is to close gaps, remove bottlenecks and technical barriers, and to strengthen social, economic, and territorial cohesion in the EU.

In light of the current global political (and economic) landscape, pushing forward with efficient, well-connected and environmentally friendly infrastructure in terms of TEN will be key for competitiveness, growth, job creation and the wealth of EU countries. It will also help make the EU less dependent on countries that trample on human rights, employ other value systems in terms of business ethics, and ignore environmental protection. In turn, this also means not moving forwards with globalisation at all costs, but to ensure healthy economic growth and stability in Europe.

**3D printing – a game changer?**  
3D printing could become a gamechanger. It is already used for medical prostheses, toys, shoes, and clothing, as well as for cars and even for houses. 3D printing is a fascinating technology for large automotive companies as they manufacture cars in large quantities.

Car bodies and individual parts are already being produced through 3D printing. The recently launched Mercedes Vision EQXX is an electric vehicle that features numerous 3D printed parts – with obvious advantages: if raw materials are readily

available, prefabricated parts no longer need to be transported over great distances, making them more environmentally friendly while costs are saved, and production times shortened.

In summary: The rapidly changing geopolitical situation, the climate crisis, the COVID-19 pandemic, and many other factors have made it necessary to rethink the world, and Europe. New technologies are both partially the cause and the result of these rapid changes that are currently taking place and will continue to be so.

**Securing new risks / Protection against new risks.**  
Whereas some existing risks will take a backseat, new and unknown risks will arise often unexpectedly. Protection against these risks will be the key to ensuring the economic survival of many businesses. There is only one good solution: collaborate with an insurance broker who thinks ahead and thinks of, and prepares for, the impossible!



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## Ferrari's Hidden Gem: The Sports Car Transporter

*How good is your imagination? Imagine a car carrier with a prancing Horse logo. It demands a vivid imagination, especially when it took the Italian supercar manufacturer so many years to produce a four-door car for its fans.*

Nevertheless, as incredible as it may sound, in the 1960s, a few car carriers with the Ferrari logo roamed the roads of Europe.

To tell the truth, it was not a thoroughbred Ferrari horse. In 1959, the car transporter "682/RN-2" was made by Fiat, and the Ferrari factory adapted it to its needs. The car transporter was equipped with small workshops, sleeping places, and the legendary Ferrari 256 F1 and 256 P1. The car carrier was powered by a 10.7-litre diesel engine that produced 175 horsepower. Inside, a four-speed gearbox and drum brakes were installed. Unlike today's luxury car carriers, the sports cars were transported in an open cab.

Although the Ferrari car carriers rarely enjoyed the same attention from spectators as its cargo - most visitors were drawn to the racetracks to watch the formula cars and their crazy drivers - they had to participate in many logistics races. Both car carriers had to ensure the Ferrari formulas reached the tracks on time. Formula 1 cars' participation in

the world championship depended on car carriers. Unfortunately, the Ferrari team hadn't celebrated many victories in Formula 1 then. Thanks to the car carrier, Ferrari sports cars made it to Le Mans 24-hour race and won it.

Despite the ambitious logo on the front grill, this has not been the fastest car carrier of its time. Two Ferrari car carriers have relentlessly transported sports cars for two years, and they were later sold to a Venetian merchant. After changing hands several times, one was recently sold for \$998,000.



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## Breaking Through the Limits

*There are eight chapters and 51 articles in the Convention on the Contract for the International Carriage of Goods by Road, better known as CMR. You may not have read a single one of them, but if the word “logistics” sounds familiar to you, you should have at least heard of the infamous 8.33 SDR/KG weight limit.*

It's the nemesis of every shipper and the salvation of every trucker who has had an accident. Many consignees have tried to find a way around this weight limit restriction, but only a few have ever succeeded. So, what's needed to overcome it? One thing's for sure, it's a lot more than simply playing the gross negligence roulette wheel!

### **The usual approach to overcoming the infamous 8.33 SDR/KG weight limit**

The hauler's 8.33 SDR/kg liability limit for damaged or lost shipments is one of the cornerstones of the CMR convention. Many who have tried to circumvent it have been tempted to increase the limit through a separate agreement with a carrier. However, ruthless article no. 41.1, which states: “any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void”, has quickly put a stop to any such plans. You may have spotted that CMR allows a shipper and a hauler to reach an agreement about a separate limit. As stated in article no. 26.1: “higher compensation may only be claimed where the value of the goods or a special interest in delivery has been declared in accordance with articles 24 and 26”. Both articles 24 and 26 follow the same phrasing - higher compensation can be granted “against payment of a surcharge to be agreed upon”. Sounds simple enough, doesn't it? But sadly, no! There are two pitfalls here for shippers seeking greater compensation than the stipulated limit. Firstly, the value of the goods must be declared in a consignment note, and secondly, a surcharge payment must be agreed between the shipper and the carrier. We'll look at each in turn.

### **Declaring the value**

“It has been established in the CMR convention article 24, that the shipper might declare that the cargo value exceeds the limits described in article 23.3, if the agreed fee has been paid and that sum changes the before mentioned limit” E2-8562-587/2018, Supreme Court of Lithuania

This doesn't mean you must spend a fortune with a trucker to overcome the weight limit. Far from it.

The CMR convention simply says that a payment of a surcharge must be agreed upon. The Supreme court of Lithuania's case no. e3K-3-123-219/2017 provides a good example of what can be achieved: A freight forwarder agreed in a transport order with a hauler that “a payment surcharge, which increases the hauler's limit described in CMR article 23.3 up to the cargo value, is included in the freight fee (20% of freight fee)”. This example is based on Lithuanian law but provides flexibility for freight forwarders to be able to rely on a relative amount as payment of the surcharge.

You might be willing to reveal the actual value of the goods in your transport order, or you might prefer to simply state that “the hauler confirms that it is familiar with the market value of the goods. If the carrier doesn't know the expected market value of the consignment, it must inform the customer.” But to tell you the truth, the latter is probably too little to secure your or your customer's, interests.

Article 24 in the CMR convention is straightforward. A shipper can “declare in the consignment note a value for the goods exceeding the limit laid down in article 23.3”. If we follow this article word-for-word, then the value must be properly declared on the waybill. The same principle is held in the Vienna Convention on the Law of Treaties 1969, article 31, which states that it's required that the ‘ordinary meaning’ be given to the terms of the treaty, although assistance can be sought from the travaux préparatoires, if the ordinary meaning is unclear, or if it leads to an absurd result.

Although, a very recent decision by the German Federal Court (Judgment of the German Federal Court of Justice of 17.12.2020, I ZR 130/19) has highlighted the significance of the value of the declaration on the consignment note. They took a literal interpretation of CMR's articles 24 and 26 and decreed there was no mutual agreement between the sides due to a lack of declaration of “special interest” in the CMR waybill. Even though this decision is not legally binding in other countries, it acts as a persuasive authority for many.



On the other hand, however, English courts have distanced themselves from this approach and have adopted a “purposive” attitude when interpreting these CMR articles. The same tack was taken by The Supreme Court of Lithuania. In the previously mentioned case, the freight forwarder declared the goods value in the transport order and consignment note which accompanied the cargo invoice. That has been deemed enough to evidence the declaration of value.

#### **An alternative approach: full cargo insurance**

If declaring the value of goods sounds confusing, there is a second option which is trending among European shippers. The declared value of the cargo is being increasingly replaced by the requirement for the hauler to purchase full cargo insurance. One such example can be seen in the finished vehicles logistics industry: “Lower limitations of liability set by mandatory transport law do not dismiss the Carrier of its obligation to take out a cargo carriage insurance for the full actual loss or damage to the cargo”.

The duties of the freight forwarder are listed in the Civil Code of the Lithuanian Republic. Article 6.824 tells us that a freight forwarder is accountable for organizing delivery of freight, signing transport orders, and other contracts ensuring loading and unloading and carrying out other duties related to freight transport. There is no obligation to take out cargo insurance for the freight forwarder. The list is not exhaustive, and an insurance policy can be interpreted as one of the other documents which freight forwarders can sign on behalf of their customers (this legislation might differ from EU country to country).

CMR does not preclude an agreement about provisions undiscussed in the convention. The convention does not stipulate the trucker’s duty to take out cargo insurance upon receipt of instruction. If you follow this path, you must remain clear and precise about your intentions. The Court

of Appeal of Lithuania has advised (2A-437-117/2015) that the “cargo value must be fully covered by the haulers insurance” is not sufficient to establish the carrier’s duty to purchase separate cargo insurance.

However, there are as many “ifs” in this approach as there are positives. If the hauler is instructed to take out cargo insurance and fails to do so, you might be able to claim for any losses through failure to fulfil obligations. The claim would be based on Civil Code rather than the CMR convention since the liability arises from failure to fulfil obligations other than haulage. Furthermore, your transport order must be clear about the consequences to the carrier for failure to take out cargo insurance. In addition to that, a simple paragraph in the transport order might not be enough, as you might have to prove that you were interested in having cargo insurance by requesting a policy or inquiring about the premium.

#### **So, what’s the answer? How do you overcome the CMR weight limit dilemma?**

All in all, one could conclude it is the best to complement your transport order by adding one of the following articles to your agreement:

- The carrier is liable for the damaged or lost cargo in accordance with articles 24 and 26.1 of the CMR Convention.
- The carrier agrees and understands that the 20% surcharge included in the freight fee represents the risk that its liability is increased up to the cargo value, which may exceed the amount calculated in accordance with the formula number of kilograms of cargo weight x SDR rate for the day of loading x 8.33 (kg x SDR x 8.33).
- The above-mentioned risk premium is already included in the estimated freight fee.
- If a hauler’s liability insurance (sum insured and/or weight limit x weight) is lower than the value of the cargo, the hauler agrees to take out separate all risk cargo insurance policy for the shipment. If the hauler

fails to fulfil this obligation, it would be liable for any losses as if the cargo insurance had been taken.

As in any good pharmaceutical commercial, you must understand that there might be side effects when implementing any of the above articles, and you should seek advice from your lawyers before commencing any changes.

It should also be noted that it’s a rare occasion when a hauler takes out separate cargo insurance, and it’s even rarer when a carrier has cargo liability insurance which addresses declared value. Although, it’s an open secret that most truckers don’t bother to read transport orders.

Our suggestions mean walking a thin line. The hauler’s liability insurance is unlikely to recognize them, and you will have to defend your interests in court. It’s always best to advise your customer to take out independent cargo insurance or through their freight forwarder, rather than relying on tricking the hauler into signing an excessive transport order.



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**GrECo,  
matter of trust.**

## Cyber threats in Transportation & Logistics

Digitalization and the rapidly increasing use of operational technology has opened new communication and wireless channels that link directly to companies’ digital systems. These are targets for hackers because they continuously collect, integrate, and analyze on-board information to track transportation details.

Cyber insurance completes an organisation’s cyber security risk management by providing broad insurance coverage, including vital financial compensation and crisis management support in the event of a cyber breach.

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## EVER GIVEN Leads to Birth of New Insurance

*Who can forget when, a year ago, MS Ever Given – one of the world's largest container ships with a length of almost 400 meters and a width of 60 meters - ran aground transversely across the Suez Canal?*

Certainly not the companies whose goods were in the 18,000 containers onboard the vessel, or those whose goods were considerably delayed onboard the 400 cargo ships stuck in the Ever-Given-traffic jam, or the insurance companies whose transport insurance policies were being pushed to the limit. One year on and the delivery delays caused by the accident are still having an impact today, including shaking up the insurance market resulting in the development of a new type of insurance: TDI or Trade Disruption Insurance.

### What is Trade Disruption Insurance and why is it required?

To a large extent, in classic goods transport insurance, damage, as well as additional costs incurred for goods that are directly on the affected means of transport, can be insured. This also includes the so-called general average, which exists when the captain arranges for extraordinary expenses to be incurred to rescue the vessel from an immediate and common peril, such as the sea throwing of goods, the flooding of holds in the event of a fire, or

tugging and dredging operations, as in the case of Ever Given.

Particularly in the case of the general average, the insurance cover enables the goods on the damaged vessel to be released. Those who are not insured must pay themselves – a not inconsiderable cost risk. In the case of Ever Given, claims payments in the high three-digit millions were made by the insurers and reinsurers.

The situation is different for goods on ships that are only indirectly affected by the time delay. The mere delay of the voyage does not trigger a claim under conventional transport insurance policies, and this is precisely what is now bringing a new insurance onto the scene.

To provide a solution for indirect risks such as travel delays, a so-called "Trade Disruption Insurance" (TDI) has been developed in the London

market. Unlike traditional business interruption insurance, this parametric solution covers those costs, expenses and lost profits that result from events that do not cause physical damage.

To stay with the specific case of the Ever Given accident, the blockage of waterways can be chosen as the coverage trigger. If the insured event occurs, payment of the agreed limit (less the deductible taken) is made. In this way, losses caused by delays or non-arrival of goods can also be covered.

The new TDI insurance is designed for major loss scenarios and can be customised. It can also be extended, for example, to cover loss of earnings, contractual penalties, liquidated damages or other costs and expenses such as additional financing costs. It thus offers a comprehensive solution for a complex

risk that is becoming ever higher due to global development.

At a time when cargo ships are usually being loaded to their maximum capacity - posing safety risks for the crew and cargo, especially in bad weather, and making salvage operations more difficult - and at a time when industries, even before the blocking of the Suez Canal by the Ever Given, were already struggling with supply bottlenecks causing interruptions in the supply chain or even production standstills, this new Trade Disruption Insurance is a blessing for the transport and logistics industry, and cannot have come soon enough.



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## How logistics insurers are turning a blind eye to the laws

*"As soon as a law has been duly proclaimed, no one can excuse himself by not knowing it."* –

Austrian General Civil Code (ABGB) article no. 2.

This principle is built into the civil law of every democratic country and insurance services are no exception to the rule, no matter which country you are in. Yet many insurers in Eastern Europe are confident that they can turn a blind eye to the laws just because logistics insurance products are less popular than say MTPL. The question for the industry is therefore, how much can you trust that those same insurers will comply with the law in the case of a loss?

One of the most valuable things about the EU is that its open borders policy allows for the free movement of goods and services within its nations, eliminating discrimination on the grounds of nationality. The insurance market has capitalized on the opportunity by abolishing borders in favour of the convenience to be able to grant insurance coverage in different regions. For example, a logistics company with a head office in a Baltic country can obtain an offer from e.g., Lloyd's Europe, or seek to include their subsidiaries in other EU countries under one single policy as co-assureds. Many local insurers have taken this a step further and extended the freedom of services principles to insure risks in non-EU countries, even if that doesn't comply with the laws of those nations. There is a saying: a good example is worth a million words. So, let's get hypothetical:

**Scenario #1: validity of cargo insurance when transporting goods outside the EU and EFTA**  
Imagine, you are running a logistics company in Warsaw and have subsidiaries in the United Kingdom and Kazakhstan. You take your responsibilities seriously

and purchase cargo liability insurance through a local insurer who offers to include your offices in London and Nur-Sultan as co-assureds in the same policy. Does the local insurer have the right to insure risks in United Kingdom and Kazakhstan? The simple answer is no. The principle of freedom to provide services in other countries applies only to EU nations. Neither the United Kingdom nor Kazakhstan are members of the EU. Nor are they members of the EFTA like Norway, Denmark, Iceland, and Liechtenstein who can, through a separate agreement with the EU, also enjoy the benefits of freedom to provide services. Not even under the WTO general trade and services agreement can your local insurance company truly provide you with the cover necessary to insure all your risks in these non-EU or EFTA countries. The WTO GATS loophole, which many local insurers have been using, allows non-resident suppliers of financial services to supply, in principle, the insurance of risks relating to the transportation of goods, providing a limited range of services in other WTO member countries provided they follow the host's (insurer's) national laws.

In our imaginary scenario, this isn't going to wash in Poland because under local law the policy will only stand if the insurer establishes an office in the countries outside the EU/EFTA, in this instance the UK and Kazakhstan. Let's face it, that is unlikely to happen. So, the reality is many local insurers act anyway, outside the regulations, reasoning that they are insuring the interests of the shareholder who is based in the EU. Sadly, insurance policies which describe the interest

of the shareholder as an object of insurance are an exception to the rule. The more common straightforward approach would be to include the United Kingdom and Kazakhstan companies as co-assured, meaning the liability of the co-assured (not shareholder) in the United Kingdom and Kazakhstan is insured. Essentially what that means is your goods are not properly insured against all risks and liabilities.

### Scenario #2: transportation from Gdansk to Ghana

Let's look at another scenario. You are acting as a freight forwarder. Your task is to ship a container full of Polish products from Gdansk port to Ghana. The shipment will travel in accordance with either EXW or CIF terms. You book cargo insurance with your local insurer. Is the Polish insurer eligible to insure such a shipment?

First things first, we must identify whose property interest would be insured as per the cargo insurance policy. With EXW, the risk or liability for the goods transfers from the seller to the buyer as soon as the goods are made available at the named destination. In this case, the risk rests with the buyer in Ghana. With CIF, the risk is transferred as soon as the goods are loaded onto the ship in Poland, meaning the seller is obliged to insure the goods, but the risk and interest lie with the buyer before the goods have left the country of origin.

In the transit of goods from Poland to Ghana there is very little to no EU country involvement, so how does an EU insurance policy apply? In short, it doesn't. The insurer might argue that they are insuring the interests of the freight forwarder, defined by its liability. These are governed by the Hague Visby rules which state that a maximum of 50,000 EUR liability (for a container weight load of 20 tons) is allowed. If the sum insured is higher, the Ghana-based consignee's interest would subsequently be insured by the Polish insurer who is seen as a non-admitted insurer in Ghana.

The good news is that most nations allow non-admitted insurers to insure goods in transit. The bad news is that there are a considerable number of countries which restrict such insurance, and it's worth finding out which ones they are before you ship your goods! For example, Ghanaian regulations state that marine cargo insurance

of imports, not including personal effects, must be insured by a local Ghanaian insurance company.

The long and the short of it is the fact that there are no EU interests in this shipment and that Ghanaian law does not allow cargo insurance for imports outside of Ghana, matters not a jot to the local insurer who will still proudly issue your cargo insurance policy, and will also accept no responsibility if you ever have to make a claim.

### What's the solution?

In conclusion, you need to do your homework before you take out cargo insurance when transporting goods outside the EU. Ask yourself, is your insurer selling you the right policy to ensure all your liabilities are covered at every stage of your shipment's journey. There are solutions to ensure you are insured for every step of the way such as including clauses which identify the insured interest rather than leaving it for guesswork, or taking advantage of a fronting cargo liability policy with local insurers who have offices in other countries. All that requires effort, but until such a time as the Eastern regions of the EU comply with the various legal regulations on the logistics insurance side, it is essential. Gone are the days where Eastern European countries were considered wild without a care for legitimacy, if we challenge and question and insist on the correct insurance for our shipments today, maybe we can bring about change so that cargo insurance policies are robust and legitimate for their whole journey, no matter what country they are going to in the future.



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## How to Avoid Falling Victim to a Phantom Hauler

*It's the early hours on Friday morning. You receive an order to ship fish from your best customer. It is December - a time of holiday shopping and an immense shortage of haulers.*

The demand for shipping the last goods of the year is through the roof. You find yourself along with many others hunting high and low for an available truck. You're desperate because none of your regular truckers is available, so you place a shipping request announcement on the online freight exchanges. Suddenly, all your efforts pay off as a new message notification pops up in one freight exchange. A hauler from a neighbouring country is willing to take your load. You breathe a sigh of relief.

You have heard all the horror stories about phantom haulers - the ones who take the goods and magically disappear, leaving you with an angry customer. You stop for a minute even though you are eager to load the truck. You check their license and corresponding documents. Furthermore, you call their liability insurance company to get confirmation that the insurance policy is valid and paid. In addition, you even ask for recommendations and receive assurance from other known logistics companies that they have successfully worked with the hauler. Everything looks good. It's fish. It's not mobile phones or computers or other thief-attractive goods. Who would steal a full truck of frozen fish? You give the green light to load the goods. You head home for the weekend believing you've saved your customer from disaster.

It's Monday. New week. Fresh start. First, you must complete the Friday delivery. The truck should be near the consignee's premises, except it's not! The owner of the hauler tells you personally that their truck has broken down. A harsh winter storm went through Europe over the weekend - that's plausible - and freezing temperatures have damaged the truck. In addition to that, several other known haulers report the same problems. No concerns. Tuesday. The truck is far from the delivery destination. This time, the hauler explains that customs have held them up. It happens. No big deal. Wednesday, finally, the day of delivery. The driver assures you that he is 30 minutes from the final destination. Then an hour or two passes. The consignee has lost all patience and tells you there is no truck in sight. You try to call the driver and owner of the hauler. The phones are disconnected. It's the moment when you realize that something is wrong.

You head for the internet and look for answers. There are messages from other freight forwarders about missing shipments handled by the same hauler that same week. Suddenly you know the answer. Your cargo and hauler are gone for good. You've done everything right. You have checked the documents, called the insurer, and even asked for recommendations. Lucky for you, but not so much for the insurance company, you notify your cargo liability insurer about possible theft. The loss is nearly 50,000 Euros.

### **A need to be vigilant: How to identify a phantom hauler**

Long gone are the times when criminals tried to trick you by presenting fake documents. Nowadays, they attempt to understand your operations and cover up anything which could lead to suspicion. More frequently than not, you might not be able to recognize a criminal disguised as

a trucker. At this point, adequate cargo liability insurance is the only thing to make a difference between a bad and a disastrous situation, such as your business going bust. Luckily there are things you can do. There is no 100% guarantee of success, but at the very least these steps will help to identify amateur thieves:

- Truck number - a pivotal clue to reveal if the person you are talking to is who he says he is. It's essential to make sure you are dealing with the hauler rather than another freight forwarder. You must check if the truck license plate number matches the company's registration country and MTPL and/or Green Card insurance - a must-have for any truck. This will disclose the truck's true owner.
- Hot spots and hot times - over half of the fictitious pickups occur at the end of the week when the primary concern for freight forwarders is meeting a delivery deadline and satisfying the customer. This urgency often causes managers to carry out shoddy driver and carrier screening. Fictitious pickups also spike during the holidays when deadlines are plenty and resources are stretched.
- Targets - thieves are rarely picky. If 5-7 years ago they preferred long hauls, nowadays even short routes might catch their attention. TAPA says that the most vulnerable commodities are food items, electronic equipment, clothing and footwear, and cosmetics. The truth is, they take the load first and then think about what to do with it afterwards. Even such goods as water bottles or rock wool have fallen victim to fake sub-contractors.
- Know the rate - If a carrier contacts you offering a rate to move your shipment that sounds too good to be true, exercise additional caution.

Essentially, stay safe, triple-check your new subcontractors, and always have a plan C if things go south.



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## Finding Safe Rest Stops for Haulers: The Never-Ending Battle

*Ever wanted to see a hauler, insurer, and shipper fight over something? Ask them about secure parking areas and enjoy the drama! This never-ending debate is infiltrating its way into insurance terms, customer contracts and more.*

### What's all the fuss about?

A recommendation by shippers for haulers to opt for secured parking areas is more than just friendly advice. Ignoring such instructions could well result in gross negligence because of theft. Shippers have their reasons for requesting that haulers select a secure location for rest stops, especially if they are transporting valuable

electronic items, fashionable clothing, or other thief-attractive goods: TAPA declares that 78.8% of consignments are stolen from unsecured parking locations. On the flip side, it's true more often than not that a hauler won't find a secure parking place en route, or even somewhere to park with a light. Even though the European Commission talks about increasing invest-

ments in developing secured parking areas, things are moving at a snail's pace, and finding a safe parking location outside Germany and Benelux countries is like finding a needle in a haystack. However, it's essential a haulier does some research to find out if they are going to be able to meet the shipper's secure parking requirements and advise them accordingly. For example, if a delivery route goes near Berlin and the haulier is planning a rest stop there, they should be aware that there is no secured parking area within a 100 km radius.

### How to find secure rest stops

There are many resources designed to help hauliers find safe and secure rest locations along, or near to, their route. The most notable ones are:

- TRANSPark - an IRU project which includes the most comprehensive list of secure parking areas. It is worth mentioning however that only a fraction of these stops have reviews.
- Truck Parking Europe - a list that gives more options in Eastern Europe, and more stops have reviews
- European Secure Parking Organization - a list of certified rest stops only. It is shorter but it ensures more security.

In addition, it's always good to remind the hauler/driver not to leave the trailer unattended, even if a secure rest location has been selected. The best way to achieve that as a freight forwarder is to add a clause to the transport order, such as:

"The driver is prohibited from leaving the vehicle with the cargo unattended (i.e., moving away at an unsafe distance that makes it impossible to properly monitor the vehicle with the cargo). Otherwise, the carrier's actions may be considered wilful negligence. In this case, the carrier will face unlimited liability for lost cargo."



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## Freight Forwarder or Carrier: A Small Difference With a Big Impact

*In most countries with a developed legal culture, there is a clear terminological distinction between freight forwarder and carrier. To put it very simply: freight forwarders organise transport and carriers carry them out.*

Freight forwarders usually have quite limited liability, while carriers have stricter liability with higher amounts. However, as far as liability is concerned, there are exceptions to this rule in some countries, e.g., Austria, whose UGB is quoted below:

- Self-admission: § 412 reads: (1) Unless otherwise specified, the freight forwarder is authorised to carry out the transport of the goods himself. (2) If he makes use

of this authority, he also has the rights and obligations of a carrier or shipper; he can demand the commission, the costs that otherwise regularly occur in forwarding transactions and the usual freight.

- Fixed-cost forwarding: this is regulated in § 413 (1): If the forwarder has agreed with the consignor on a certain rate of transport costs, he exclusively has the rights and obligations of a freight forwarder. In such a case, he can only demand commissions if this has been specifically agreed.

- Groupage forwarding: § 413 (2) determines: If the freight forwarder effects the shipment of the goods together with the goods of other consignors on the basis of a freight contract concluded for his account for a groupage, the provisions of paragraph 1 apply, even if an agreement on a certain rate of transport costs has not taken place. In this case, the freight forwarder can demand freight that is reasonable under the circumstances, but no more than the freight that is customary for the transport of individual goods.

“Having the duties of a carrier” means, among other things: to be liable in the same way as a carrier is. To show the difference: A freight forwarder is generally liable – without going into details such as maximum amounts, waiver of liability in certain cases etc. – according to the General Austrian Forwarder Conditions for 1.09 EUR per lost kilogram of gross weight, but a freight forwarder who concludes a contract of carriage according to CMR article 23 usually has 8.33 SDR per kilogram gross weight, converted to about 10€/kg. Being burdened with only about a tenth of the standard liability in the event of damage, naturally makes it attractive for freight forwarders not to have to be treated like a carrier in terms of liability.

### Forwarder or carrier: a question of liability

What are the reasons why freight forwarders have the duties of a carrier in the aforementioned cases? In the case of § 412 UGB it is obvious: why should a forwarder who concludes a forwarding contract but carries out transport with its own vehicles despite just being a so-called “sofa forwarder” with a desk, laptop and telephone without his own vehicle fleet, be treated any differently to any other carrier?

In the case of so-called fixed-cost forwarding, the explanation is that a freight forwarder could be tempted to choose a good, inexpensive carrier, but not the best, who might also have higher freight rates. In the

case of freight forwarding at fixed costs, the freight forwarder generally does not disclose his commission and is therefore tempted to focus on maximizing profits at the expense of the carrier’s quality. They may not have the latest equipment, the best drivers, the most modern technical equipment, the best know-how about transport routes, or secure parking lots, etc., which means that damage can occur more easily. And, because this increases the risk for the freight forwarder’s customer, he is also subject to stricter liability. Similar considerations apply to groupage shipping. In the case of consolidated loads, goods are also more likely to be damaged or lost, as experience has shown.

Recently a south-east European freight forwarder was very proud of a framework agreement he had created himself for orders from customers, with which the freight forwarder wanted to limit his liability as much as possible. The supposedly resourceful freight forwarder created an “order document” which was entitled “transport order” and with which clients were able to place orders with him. On the form itself, it was pointed out that the contractor acted as a freight forwarder – also under commercial law – and acted on the basis of the general freight forwarder conditions of his association, but the text then referred to “freight payment”, “due date of freight” etc. Due to the text in the document, the conclusion of an “original freight contract” / “contract of carriage” can be assumed.

In this case, there is no need for a “detour” via self-employment, fixed-cost or groupage freight forwarding, since the CMR as an international treaty is mandatory for international road haulage. Article 1 of the same states: “This Convention applies to every contract for the carriage of goods by road for reward by means of vehicles...”. And CMR article 41 stipulates that an agreement may not be used to deviate directly or indirectly from this convention,

otherwise, it will be void and have no legal effect. It follows that in this case anyone who concludes a contract of carriage (also known as a transport contract) by accepting a “transport order” (or similar) is liable under freight law. This also applies to freight forwarders.

The “resourceful” freight forwarder should have had his “order document” checked by a lawyer, or by a knowledgeable insurance partner. Insurance partners who run “Transport” as a group practice, are of course able to advise customers on how to minimize liability risks and ultimately save on insurance premiums because they deal with many claims.

It goes without saying that if a claim does occur, the insurance partner should support the policyholder with their expertise and accompany them through the settlement of the claim in the best possible way. Experience is one of the most important assets that an insurance partner can offer, especially with internationality in transport, as well as excellent contacts with lawyers, average adjusters, and experts whose involvement is often a necessity in the event of major claims.



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