CMNI-Convention in relation to the Bratislava Agreements

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HISTORY IN BRIEF

• Unlike on the Rhine, alongside the Danube the riparian countries never had a sophisticated system of cooperation.

• The Danube inland waterway transport was governed by the Belgrade Convention, which regulated (and still regulates) only a rather limited segment of the navigation on the Danube.

• At the same time most of the Danube countries belonged to the communist block, which meant only one (state owned) shipping company in each country.

• When the need arose to create a private law framework in the early 1950’s, these monopolist companies agreed on the conditions they would use in respect of the river transportation.

• Together with the fact that the Danube was a fully separated waterway, this had an actual effect of this agreement - the Bratislava Agreements of 1955 - being used as a kind of an international treaty.
THE BRATISLAVA AGREEMENTS

The Bratislava Agreements include several agreements, which the member companies undertake to apply in their inland navigation activity:

• General terms and conditions of international carriage of goods on the Danube
• Provisions on accidents
• Freight policies and cooperation of the carriers
• Mutual assistance at accidents
• Harbor agencies
• Shipping of large containers
• Repair
• Sample Agreements on the takeover, handover, care
• Managing the freight journal

The main areas
Opening of the Rhine-Main-Donau Canal meant that new carriers appeared applying their own conditions and not the Bratislava Agreements.
THE „WIND OF CHANGE”

DMR Canal

Fall of the communist regimes

CMNI

• The shipping market in the Danube countries became free that is the state owned shipping companies had been privatized and new shipping companies have been formed
• The Bratislava Agreements gradually lost its perceived role as a international agreement on the multiplayer markets
• Until the coming into force of CMNI in 2005 the laws of the Danube countries on inland transportation were still different
• The Bratislava Agreements could still play the role of a unified set of roles as the law on the contract of carriage were mostly dispositive, i.e. the parties could freely agree on the application of the Bratislava Agreements
• CMNI changed this fundamentally being a genuine international treaty
THE NEW SITUATION AFTER CMNI

SCOPE AND SUBJECT

APPLICATION

THE LINK BETWEEN CMNI AND THE BRATISLAVA AGREEMENTS

• CMNI is applicable to any contract of carriage according to which the **port of loading** or the **place of taking over of the goods** and the **port of discharge** or the **place of delivery of the goods** are located in two different states of which at least one is a state party to CMNI.
The signatories of the CMNI undertake to apply the terms and conditions of the CMNI.

The convention does not allow the parties to exclude their liability and to assign their insurance claim of goods.

CMNI specifically lists the cases where it does accept limited liability, other than that the first sentence shall prevail.

CMNI as an international convention is considered a primal agreement meaning that domestic (national) laws and individual contracts may supplement the rules of CMNI but may not contradict it, unless the signatory has upheld its right to differ in certain cases at signing.
The Bratislava Agreements were an interstate convention before the state-owned monopolies of inland waterway carriage were transferred to private companies.

The Bratislava Agreements cover more topics, among them the carriage of goods.

The CMNI is a new convention that focuses only on the carriage of goods and is an inter-state international agreement.

Concluding the facts

CMNI that is primer to the Bratislava Agreements on an international level as its members are states, however may the Bratislava Agreement be in force in any of the members of CMNI, in case of no contradiction, the terms of Bratislava Agreement may be supplementing the CMNI.
THE COMPLEX LEGAL STRUCTURE

1. CMNI 2001
2. Bratislava Agreements
3. Country Regulation
4. Intercompany terms and conditions

CMNI signature countries

BA countries

countries
Bratislava Agreements
Country Regulation
Intercompany terms and conditions
MEMBERS OF THE CMNI AND THE BRATISLAVA AGREEMENT

CMNI
- Czech Republic
- France
- Luxembourg
- Netherlands
- Switzerland

BRATISLAVA AGREEMENTS
(countries with shipping companies that are members)
- Bulgaria
- Croatia
- Germany
- Hungary
- Romania
- Russian Federation
- Slovakia

Austria
Serbia and Montenegro
Ukraine
Yugoslavia
In countries where both conventions are in force the CMNI shall prevail.

The Bratislava Agreements may apply only if the CMNI does not resolve on a certain issue.

As mentioned before, the CMNI is applicable only if the purpose of the contract of carriage is the carriage of goods, so if the purpose is not transport of goods, the Bratislava Agreements (if the party is a signatory to that) shall apply.

Neither the CMNI nor the Bratislava Agreements shall apply in case of maritime transport.

The CMNI is applicable regardless of the nationality, place of registration or home port of the vessel or whether the vessel is a maritime or inland navigation vessel and regardless of the nationality, domicile, registered office or place of residence of the carrier, the shipper or the addressee.
Differences in the Agreements - Liability

1. Liability

- Bratislava Agreement: Loss or damage to goods; Delay in delivery of goods;

- CMNI: Loss or damage to goods; Delay in delivery of goods;

2. Exoneration

3. Special cases of exoneration

4. Limits of liability

5. Objection, enforcement of claim
**DIFFERENCES IN THE AGREEMENTS - EXONERATION**

<table>
<thead>
<tr>
<th>1</th>
<th>Liability</th>
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<tbody>
<tr>
<td>2</td>
<td>Exoneration</td>
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<td>3</td>
<td>Special cases of exoneration</td>
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<tr>
<td>4</td>
<td>Limits of liability</td>
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<td>5</td>
<td>Objection, enforcement of claim</td>
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<tr>
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<tr>
<td>Onus probandi lies on the addressee to prove that the damage, loss was caused during discharge while:</td>
<td>If loss was due to circumstances which a diligent carrier could not have prevented and the consequences of which he could not have averted</td>
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<tr>
<td>• the goods were handed over intact and the shipper's lead was intact;</td>
<td></td>
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<tr>
<td>• the goods were forwarded in intact package and no signs imply opening of the package</td>
<td></td>
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<tr>
<td>• the goods were shipped with a due guard on stand</td>
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</table>

Comment: *since the CMNI defines a broader general provision, this is not contradicting the CMNI rules.*
<table>
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<th><strong>1. Liability</strong></th>
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**Bratislava Agreement**

- force majeure, emergency;
- breach of the convention by shipper;
- acts or omissions of the shipper, the addressee or the person entitled to dispose of the goods;
- handling, loading, stowage or discharge of the goods by the shipper, the consignee or third parties acting on behalf of the shipper or the consignee;
- carriage of the goods on deck or in open vessels, where such carriage has been agreed with the shipper or is in accordance with the practice of the particular trade, or if it is required by the regulations in force;
- nature of the goods which exposes them to total or partial loss or damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage (in volume or weight), or the action of vermin or rodents;
- lack of or defective condition of packaging in the case of goods which, by their nature, are exposed to loss or damage when not packed or when the packaging is defective;
- rescue or salvage operations or attempted rescue or salvage operations on inland waterways;
- carriage of live animals, unless the carrier has not taken the measures or observed the instructions agreed upon in the contract of carriage.
## 4 DIFFERENCES IN THE AGREEMENTS – LIMITS OF LIABILITY

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<td><strong>The main rule is that if the freight documents indicate the value of the shipped goods, the carrier's liability shall be up to that value (or the parties may mutually stipulate a higher amount). If the value is not indicted, the following rules apply:</strong></td>
<td><strong>limited liability up to 666.67 units of account per package or other shipping unit, or</strong></td>
</tr>
<tr>
<td>• actual value of the goods;</td>
<td>• 2 units of account per kilogram of weight, specified in the freight document, of the goods lost or damaged, whichever is the higher.</td>
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<td>• amortization value;</td>
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<td>• lack of indication of value, the carrier is liable up to EUR 320 / piece or EUR 96/ ton, maximum.</td>
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<td><strong>Comment: If the BA amounts would be less than the CMNI amounts then the CMNI shall prevail. In any case the limits may not be broader than that defined in CMNI.</strong></td>
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</table>

If the package or other shipping unit is a container and the transport document does not mention package or shipping unit, the container shall be calculated for 1,500 units and its contents for 25,000 units.

The aggregate of the amounts of compensation recoverable from the carrier, the actual carrier and their servants and agents for the same loss shall not exceed overall the limits of liability.
DIFFERENCES IN THE AGREEMENTS – OBJECTION, ENFORCEMENT OF CLAIM

1. Liability
2. Exoneration
3. Special cases of exoneration
4. Limits of liability
5. Objection, enforcement of claim

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<td>1 year</td>
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<td>Damage must be reported within 7 days of discharge maximum</td>
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Map of Europe showing countries.