



Organisation intergouvernementale  
pour les transports internationaux  
ferroviaires

Zwischenstaatliche Organisation  
für den internationalen  
Eisenbahnverkehr

Intergovernmental Organisation  
for International Carriage  
by Rail

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*Articles 4, 6, para. 1 (k) and 7, para. 3*

The irregularity of the consignment note (the particulars specifying that the carriage is subject to the provisions of the Convention are missing) does not have the effect of relieving the parties from the mandatory provisions of the Convention, with which each of them is supposed to be familiar, particularly those concerning the limitation of compensation for loss or damage, p. 12.

#### National law

*French Commercial Code, Article L 133-1*

The fact that a passenger does not lower or fold down the aerial on his vehicle handed over for carriage on the “car train” service, as prescribed in the conditions of transport (“passenger tariff”), does not relieve the carrier, which has entrusted the vehicle loading operation to a sub-contractor and which was itself responsible for carrying out a final check of the loading operation, from liability for the damage caused by the vehicle fire. According to the expert’s report, the fire was attributable to an electric arc facilitated by the aerial’s point effect, the short distance between the aerial and the catenary and the particular meteorological conditions, p. 36.

*French Insurance Code, Article L 121-12*

The railway, which omitted to take measures to prevent people from going near the tracks and which stocked materials near the tracks that it had the means to remove, contributed, by reason of these failings, to bringing about the damage, p. 53.

*German Commercial Code (HGB), § 425 para. 1, § 432 second sentence, § 434 para. 1*

Except in the case where qualified fault exists within the meaning of § 435 of the HGB, the contractual liability of the carrier as a result of damage to the goods being carried does not include consequential damage. As further damage within the meaning of the second sentence of § 432 of the HGB, they do not need to be compensated. In this respect, non-contractual claims against the carrier are also excluded, p. 76.

### (b) Arranged according to subject

*Compensation for damage*

Except in the case where qualified fault exists within the meaning of § 435 of the HGB, the contractual liability of the carrier as a result of damage to the goods being carried does not include consequential damage. As further damage within the meaning of the second sentence of § 432 of the HGB, they do not need to be compensated. In this respect, non-contractual claims against the carrier are also excluded, p. 76.

### III

#### Damage

Except in the case where qualified fault exists within the meaning of § 435 of the HGB, the contractual liability of the carrier as a result of damage to the goods being carried does not include consequential damage. As further damage within the meaning of the second sentence of § 432 of the HGB, they do not need to be compensated. In this respect, non-contractual claims against the carrier are also excluded, p. 76.

#### Damage caused by the infrastructure

##### – Behaviour of a third party

The railway, which omitted to take measures to prevent people from going near the tracks and which stocked materials near the tracks that it had the means to remove, contributed, by reason of these failings, to bringing about the damage, p. 53.

#### Law of carriage, applicable

The irregularity of the consignment note (the particulars specifying that the carriage is subject to the provisions of the Convention are missing) does not have the effect of relieving the parties from the mandatory provisions of the Convention, with which each of them is supposed to be familiar, particularly those concerning the limitation of compensation for loss or damage, p. 12.

#### Liability of the carrier

The fact that a passenger does not lower or fold down the aerial on his vehicle handed over for carriage on the “car train” service, as prescribed in the conditions of transport (“passenger tariff”), does not relieve the carrier, which has entrusted the vehicle loading operation to a sub-contractor and which was itself responsible for carrying out a final check of the loading operation, from liability for the damage caused by the vehicle fire. According to the expert’s report, the fire was attributable to an electric arc facilitated by the aerial’s point effect, the short distance between the aerial and the catenary and the particular meteorological conditions, p. 36.

#### Liability of the carrier

##### – non-contractual claims

Except in the case where qualified fault exists within the meaning of § 435 of the HGB, the contractual liability of the carrier as a result of damage to the goods being carried does not include consequential damage. As further damage within the meaning of the second sentence of § 432 of the HGB, they do not need to be compensated. In this respect, non-contractual claims against the carrier are also excluded, p. 76.

#### Motor vehicles

The fact that a passenger does not lower or fold down the aerial on his vehicle handed over for carriage on the “car train” service, as prescribed in the conditions of transport (“passenger tariff”), does not relieve the carrier, which has entrusted the vehicle loading operation to a sub-contractor and which was itself responsible for carrying out a final check of the loading operation, from liability for the damage caused by the vehicle fire. According to the expert’s report, the fire was attributable to an electric arc facilitated by the aerial’s point effect, the short distance between the aerial and the catenary and the particular meteorological conditions, p. 36.

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