

Liberalization of transport market and harmonization of liability rules  
in Europe

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## **INTRODUCTION**

- ❖ Multimodal transport in the policy of DG-TREN;
- ❖ Current situation and network system;
- ❖ Commission's requests to the Drafting Panel;
- ❖ Philosophy underlying the Draft Regime;
- ❖ Highlights of the Draft Regime;
- ❖ Possible developments

## **DG-TREN and Multimodal Transport**

In September 2001 the Commission published a "Report on the European policy of transports until 2010".

- ❖ To improve the overall efficiency and the balance of the growth in the transport system;
- ❖ To decrease the pressure on the road haulage system (44%);
- ❖ To increase the employment of existing alternatives (short distance navigation (41%), railway (8%) and navigable ways (4%);
- ❖ To decrease the congestion of the main ways of road haulage and the dependence on fossil fuels (environment);
- ❖ How?

Marco Polo Project and....

- ❖ .....the creation of a new profession, the so-called "Freight Integrator" or "Integrator of Carriage of goods";
- ❖ "Organizers" of the transport chain;
- ❖ A new profession in charge of the integrated transport of goods in the field of complete shipments;
- ❖ To offer Customers , and thus the Community , the best possible service with regard to transport efficiency, prices and environmental impact in a wide sense (economical, ecological, energetic etc.);
- ❖ A "fully developed" form of multimodal operator.
- ❖ Operators in the field (possible Freight Integrators) have complained about lack of a uniform rule on responsibilities all over Europe;
- ❖ It thus became necessary for the Commission to discuss the introduction of a uniform law on responsibility for the Freight Integrator.

FIATA FBL and Multidoc 95 are based on the UNCITRAL/ICC Model Rules and the so-called network system:

- ❖ A multimodal carrier is responsible for damages according to regulations applying to the system of the transport during which the damage occurred;
- ❖ In case the damage cannot be located (and in that case only) the uniform system shall apply.
- ❖ Contractual and out-of-rules effectiveness;
- ❖ Uncertainty inherent to the network system is considered by the Commission an encumbrance to a balanced development of the multimodal transport.

### **The Commission's requests**

- ❖ A Bill setting forth a uniform legislation regime ruling the multimodal carrier's responsibility;
- ❖ A provision concentrating the risk of damage and cargo loss upon a single party (the Freight Integrator)
- ❖ The provision imposing a full
- ❖ And strict responsibility for all kinds of damage, irrespective of the method of the transport during which the damage occurred:
- ❖ The end of the network system!

## **The "Draft Regime – Philosophy**

The submitted "Draft Regime" :

- ❖ Respects the parties' contractual freedom;
- ❖ Is simple and short (14 articles),
- ❖ Is a compromise considered acceptable between the Commission's requests and what the interested parties may be ready to accept;
- ❖ Does not contain any hypothesis of objective responsibility, but a presumption of negligence only;
- ❖ Does not impose the multimodal operator's full responsibility, but fixes limits thereto considered acceptable;
- ❖ Is not the proposal of a regulation, but a text to be used as basis for a dialogue.

## **The draft regime – Basic principles**

A. The regime applies:

Art. 1 (a): “contract of transport” means a contract whereby a Transport Integrator undertakes to perform or procure the transport of goods from a place in one country to a place in another country, whether or not through a third country, involving at least two different modes of transport, and to deliver the goods to the consignee.

Art. 1(d): “Transport Integrator” means any person who concludes a contract of transport and who acts as principal, not as agent or on behalf of the consignor and assumes responsibility for the performance of the contract of transport.

## **The draft regime – Basic principle**

A. The Regime applies :

Art. 2. The provisions of this Regime shall mandatorily apply to all contracts of transport between places in two different States, if

(a) The place for the taking in charge of the goods by the Transport Integrator as provided for in the contract of transport is located in a State Member of the European Economic Community, or

(b) the place for delivery of the goods by the Transport Integrator as provided for in the contract of transport is located in a State Member of the European Economic Community,

*unless* the parties to the contract have agreed that it shall not be governed by the Regime.

B. Responsibility of the "Freight Integrator".

Art. 8(1) The Transport Integrator shall be liable for total or partial loss of the goods or damage to the goods occurring between the time he takes over the goods and the time of delivery, as well as for any delay in delivery.

.....

(4) The Transport Integrator shall not be liable for any total or partial loss of the goods, or damage to the goods, or delay in delivery of the goods to the extent that it was caused by circumstances beyond the control of the Transport Integrator.

## **The draft regime – Basic principles**

### **B. Responsibility of the "Freight Integrator".**

Art. 9(1) When the Transport Integrator is liable for loss resulting from loss of or damage to the goods according to Article 8, his liability shall be limited to an amount not exceeding 17 units of account per kilogram of gross weight of the goods lost or damaged.

(2) The liability of the Transport Integrator for loss resulting from delay in delivery according to the provisions of Article 8 shall not exceed twice the amount of the charge payable under the contract of transport.

(3) The aggregate liability of the Transport Integrator under paragraphs 1 and 2 of this article, shall not exceed the limit of liability for total loss of the goods as determined by paragraph 1 of this article.

Art. 10. The Transport Integrator shall not be entitled to the benefit of the limitation of liability provided for in this Regime if it is proved that the loss, damage or delay in delivery resulted from a personal act or omission of the Transport Integrator done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Art. 11. The defences and limits of liability provided for in this Regime shall apply in any action against the Transport Integrator in respect of loss resulting from loss of or damage to the goods, as well as from delay in delivery, whether the action be founded in contract, in tort or otherwise.

## **The draft regime – Basic Principles**

### C. Time-bar

Art. 14 (1) Any action relating to a contract of transport subject to this Regime shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of nine months.

(2) The limitation period commences on the day after the day on which the Transport Integrator has delivered the goods or part thereof or, where the goods have not been delivered, on the day after the last day on which the goods should have been delivered.

## **The future of the Draft Regime**

Consultation process:

- ❖ The Draft Regime is available on the site of DG-TREN in order to gather comments;
- ❖ Written notes can be sent to the Commission until March 30, 2006, whereafter DG-TREN will decide for the future;
- ❖ A new meeting with the interested parties is planned for the Spring.
- ❖ What will become of the Regime does not depend on the Commission only, but also on the result of the consultation in progress.

## **Many thanks**

The Draft is available on line, on the site of DG-TREN . The pdf file can be discharged from

[www.iml.soton.ac.uk/staff/florenzon.html](http://www.iml.soton.ac.uk/staff/florenzon.html)

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