



**QUESTIONNAIRE ON THE INSURANCE METHODS
APPLICABLE TO THE TRANSPORT OF GOODS BY ROAD**

FRANCE

Information provided by: Institut du Droit International des Transports (IDIT)

1. Which legal bases refer in your country to the insurance of the transport of goods by road:

The legal status of insurance contracts is defined:

on the one hand, by the provisions of the Insurance Code n° 76/666 of 16 July 1976 which governs all insurance contracts in general and sets the rules applicable to the execution of the contract, notification of claims, payment of premiums, etc. and,

on the other hand, by the contractual provisions (general and specific terms) imposed on the insured party as set by the French insurance policies for liability (third party insurance) and for goods carried (cargo insurance).

a) for national transport?

The liability of domestic road carriers (third party or contractual liability) is subject to a specific insurance policy – the French insurance policy covering the liability of domestic goods carriers by road (printed in 1996).

b) for international transport?

The liability of CMR road carriers is partly subject to a specific policy - the French insurance policy covering the liability of international goods carriers by road (printed in 1994). This policy only applies to transport operations subject to the CMR.

In addition, in France there is specific third party insurance for freight forwarders – the French insurance policy covering the liability of freight forwarders (printed in 1993).

2. Is this regulation of imperative nature?

No, neither the law, nor the policies are mandatory. However, the policies' provisions are compulsory for the insured party (adhesion contract).

N.B.: Neither cargo insurance, nor the carrier's liability insurance are compulsory.

3. Does the national regulation make a distinction between an insurance concerning the damages suffered by the goods and an insurance linked to the contractual liability of the transport operator?

NO. The distinction is made through the insurance policies:

* For the goods: French insurance policy for goods carried by land (1990 printed version, amended).

* For liability: c.f. responses to 1a) and 1 b) above.

4. If the answer to question 3 is positive, is it possible to foresee the two types of insurance in the same contract?

Although cargo insurance and liability insurance relate to two different matters and represent two separate contracts, the carrier may be asked to insure damages to the cargo on the consignor's behalf. In that case the carrier should do this with his own liability insurer by filling in a separate form (third party shipper's policy or declaration policy).

5. Is there a model of insurance contract for these types of insurance?

YES, there are several: one dated 1994 which covers carriers' liability in international carriage under the CMR, a similar one dated 1996 for domestic transport, and yet another dated 1993 covering freight forwarders' liability. However, each insurance company uses its own forms (except a few attachments to the policies).

6. If the answer to question 5 is positive, does this model have to be systematically respected by insurance companies?

NO.

7. Which of these two insurances is most frequently contracted:

a) by the transport operator?

Transport operator's contractual liability

b) by the freight forwarder?

Both: contractual liability and damages to the goods.

8. In practice, does the consignor generally insure his goods?

YES, but only if the value of the goods is exceptionally high.

Consignors wishing to insure their goods have the option:

- * either to take out insurance themselves (via a voyage, declaration or floating policy);
- * or to request the carrier to do so on their behalf (third party shipper's policy).

9. What is the legal basis for the recourse by the insurer against the person responsible for the damage (including the transport operator)?

The legal basis lies in the subrogation foreseen in Article L 121-12 of the Insurance Code, whereby the insurer having paid compensation is entitled to substitute for the insured party in the latter's rights and actions up to the amount paid in compensation.

10. Is it possible to insert a clause in the insurance contract which would forbid any recourse from the insurer?

YES, but this is rarely used in practice. Statutory subrogation is not mandatory (no case law states the opposite). Consequently, it is theoretically possible to insert a clause prohibiting recourse from the insurer. However, no insurer would agree to such

a clause. In practice, upon paying compensation, the insurer systematically has the beneficiary sign a substitution discharge.

December 2009

Frédéric Letacq, fletacq@idit.asso.fr