SPAIN

Information provided by: Spanish Association of International Road Transport Companies (ASTIC).

1. **Which legal texts in your country refer to the insurance of the transport of goods by road:**
   a) **for national transport?**
   b) **for international transport?**

The same legal bases govern both types of transport –domestic and international–: Law 50/1980 dated 8 October 1980 on insurance contracts, amended several times.

Among other provisions, this law includes:

- common rules for all insurance types (arts. 1-24);
- common rules for all insurance against damages (arts. 25-44);
- specific rules applicable to contracts of carriage by land (arts. 54-62); and
- rules on insurance covering liability in general (arts. 73-76).

(There is no specific rule governing carriers' liability insurance).

In addition, insurance contracts are also subject to the general rules of the Civil Code on obligations (arts.1088-1253) and contracts (arts. 1254-1314); and as this is a relationship between companies, also to the Commercial Code (arts. 1-15 and 50-63).

These rules apply equally to domestic and international transport – the scope of application merely has to be stated in each policy.

2. **Is this regulation of imperative nature?**

In principle it is, as expressly stated in art. 2 of Law 50/1980.

The provisions of the insurance contract most beneficial to the insured apply in all cases.

However, in certain contracts of carriage, the parties are free to agree on applicable law. More precisely, this possibility exists for insuring what the law refers to as "major risks" - art. 107.2. This category includes, among others:

- insurance covering goods carried (art. 107.2,a);
- insurance covering the carrier's liability when the insured meets two of the following three conditions:
  - balance sheet of € 6,200
  - turnover of € 12,800,000;
  - average staff of 250.

  (art. 107.2,c).

If different rules apply, this should be explicitly stated in each insurance policy. Unless otherwise provided, the provisions of Law 50/1980 apply compulsorily.

In practice, the parties to contracts of carriage do not use this possibility. Consequently, Law 50/1980 applies.

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

YES. Contracts of carriage by land are governed by arts. 54-62 of Law 50/1980 while insurance covering liability in general (no specific rule for carriers' liability) is subject in the same Law to arts. 73-76.

Moreover, the law on insurance coordination – Royal Legislative Decree 6/2004 of 29 October – on the licensing of insurance companies, their control and sanctions, etc., in its art. 6 about the types of insurance which insurance companies may offer, distinguishes between:

"Goods carried" (art. 6.1.a. item 7) and

"Civil liability covering land motor vehicles, including carriers' liability" (art. 6.1.a. item 10).

Finally, the law on coordination of land transport – "LOTT" Law 16/1987 of 30 July – also provides the following distinction in its art. 21.2:

- Insurance covering carriers' liability arising from the contract of carriage (where the latter provides a possibility of making such insurance compulsory), and
- Other insurance covering damages to the goods carried (risks to be covered by the sender).

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

Theoretically yes. However:

a) Law 50/1980 on insurance contracts does not foresee this possibility.

b) This is not done in practice. Consigners and most carriers take out a policy covering damages to the goods carried.

In my opinion a mixed policy would be perfectly valid from the legal point of view: it would include all risks covered by damage policies (including acts of God) for the full value of the goods – without applying the ceilings to the carrier's liability – plus the risks included in the latter liability, which are excluded from Spanish damage policies (such as delay in delivery). First experiences are being made, but still early to confirm success.

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

a) Yes, for insurance on goods carried. There are two models:

- the General Conditions developed and approved by the Spanish association of insurance companies ("UNESPA"), which are the most commonly used, and
- the British Institute Cargo Clauses "ICC" (version A) developed and approved by the London institute of insurers, which are increasingly popular.

b) No, for insurance covering carriers' liability.

Companies offering this b) type of insurance include in their policies the CMR or national rules governing such liability. Hence, there are two types of risks:

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

NO. There is no formal obligation to follow one of those models (UNESPA conditions or ICC clauses). However, in practice, all companies systematically comply with them.

7. Which of these types of insurance is most frequently contracted
a) by the transport operator?
b) by the freight forwarder?

The type of insurance probably most frequently contracted in Spain is that covering damages to the goods carried.

This is obviously taken out by the sender wishing to guarantee the goods against any problem during transport ("all risks" coverage), but also by carriers and freight forwarders (because their customers ask them to or, more often, because they are unaware of the possibility to take out insurance covering their contractual civil liability).

This is unfortunate as insurance premiums covering damages to the goods carried are generally more expensive (as they cover more risks) and the carrier pays a premium on risks for which he is not responsible, such as acts of God for instance.

It would be sufficient for carriers to insure their liability (it is obviously possible to include in the policy an extra premium for declared values under CMR arts. 24 and 26, and their national equivalents).

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

Yes, almost always.

This raises another problem for the economy as a whole, as the final price of the product at destination is unnecessarily increased by two insurance premiums on the same goods for the same trip, or even three premiums if the freight forwarder also contracts his own insurance.

Multiplying insurance costs by two or three is illogical, and even worse if several of these premiums relate to insurance covering damages, which is more expensive (see answer to question 7). Although it is difficult to understand, this is what happens in practice!

In Spain, transport law nr. 16/1987 –LOTT- refers in its art. 21.2 to the possibility of "coordinating" both types of insurance (covering damages to the goods and covering carriers' liability), or even to "unify" them both. However, more than twenty years onwards, nothing has been done to implement this provision. Although the legal possibility exists (see answer to question 4), no legal measure has been taken.

Obviously this is not in the insurers' interest –why getting only one premium when you can cash in two or three? – but IRU's duty is to defend the interests of carriers and, why not, of the economy as a whole.

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

In Spain, art. 43 of Law 50/1980.

The insurance company, having paid compensation to his client, becomes entitled to substitute for the latter in filing a claim against the party responsible for the damage.

However, it may do so:

a) only up to the amount paid by the insurer (art. 43 idem);

b) under the same regime which would have applied to the client in the framework of the contract of carriage, i.e. subject to the provisions for exemption from the carrier's liability, the related liability ceilings, the same period of limitation (no new start of the period of limitation), etc. In short, the position of the insurer substituting for the carrier is exactly the same as the latter, i.e. the carrier is liable or not under the CMR or equivalent national law, vis-à-vis his client or the latter's insurer.

c) the insured party is obliged to assist his insurer in exercising this right of substitution, otherwise he will be liable for damages caused to the insurer (art. 43 idem).

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

YES, from the legal point of view. The insurer may waive his right to appeal for subrogation (art. 43 of Law 50/1980). Case law has confirmed the validity of this clause.

However, this naturally greatly increases the premium (as the insurer will systematically have to bear the consequences of all losses or damages).

Additionally, what would be the sense in the sender preventing his insurer from claiming against the carrier? The easiest is for the sender to rapidly obtain compensation and forget the case.

Consequently, this clause is not applied in practice.

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Francisco Sánchez-Gamborino
Legal Advisor. ASTIC (Madrid)
francisco@sanchez-gamborino.com