

## **International transportation of goods in Ukraine: legal risks and practical issues for foreign companies**

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International transportation is an integral component of the foreign economic activity of Ukrainian business. In the context of complicated logistics, changed routes and increased risks of delays, even minor mistakes in contractual regulation or document formalisation may lead to financial losses or disputes. Timely legal review of transportation terms helps mitigate such risks and ensure proper performance of obligations.

### **1. Applicable law**

For Ukrainian companies, international transportation is always associated with the issue of determining the law governing the relations between the parties. In most cases, this involves not only the contractual terms agreed by the counterparties, but also international rules applicable regardless of the parties' will.

The Convention on the Contract for the International Carriage of Goods by Road is of key importance in international transportation. It applies if the place of loading and the place of delivery are located in different states, and at least one of them is a party to the Convention.

In practice, the parties often indicate the applicable law in the agreement, for example, the law of a particular jurisdiction expressly determined. However, this does not always exclude the effect of international rules. As a result, some issues are regulated by the agreement, while others are regulated by the mandatory provisions of the Convention.

Another risk arises when the agreement does not determine the applicable law at all or does so using general wording. In such cases, the unpredictability of dispute resolution increases, as conflict-of-law rules and international rules have to be applied.

For example, a Ukrainian company enters into an agreement with a Polish carrier

and agrees on the application of Polish law. However, the parties do not determine the applicable law. In the event of a dispute regarding damage to goods, each party substantiates its position using different legal approaches, which complicates predicting the outcome of the dispute. In such situations, the application of the Convention will still be of key importance.

## **2. Contractual protection for foreign companies**

Foreign companies involved in international transportation in Ukraine should ensure that transportation agreements clearly regulate liability, dispute resolution mechanisms, force majeure provisions, applicable law, customs obligations and allocation of risks between the parties. Proper legal structuring of transportation relationships significantly reduces commercial and operational risks in cross-border transactions.

In practice, international transportation is not always formalised by a full-fledged agreement. For Ukrainian business, it is quite common for the parties to limit themselves only to a transportation order or correspondence in electronic form. A formal agreement is either not signed or is signed post factum.

In such cases, the main terms of transportation are actually determined by separate orders: route, cost, delivery terms and cargo parameters. At the same time, the general rules of interaction between the parties often remain unregulated.

For example, the customer regularly transfers cargo to the carrier on the basis of orders via email or messengers. In the event of a dispute regarding a delay of the cargo, the parties are forced to prove the content of the arrangements through correspondence, which complicates the protection of each party's position.

Another common case is when orders contain only the basic transportation parameters, but do not determine the liability of the parties, the procedure for submitting claims or the applicable law. As a result, these issues are resolved post factum in court proceedings.

There are also situations when the carrier engages third parties to perform the transportation without proper contractual formalisation of the roles in the transportation chain. For example, the actual transportation is performed by another subcontractor who is not indicated in the transport documents. This complicates determining the liable party in the event of loss or damage to the cargo.

Clear contractual regulation of international transportation makes it possible to determine the rights and obligations of the parties, as well as minimise the risks of legal uncertainty in the event of a dispute.

## **3. CMR liability in international transportation**

Under the Convention on the Contract for the International Carriage of Goods by Road (CMR), the carrier is generally liable for total or partial loss of cargo, damage to goods, and delays occurring between acceptance of the cargo and delivery to the consignee. In practice, disputes often arise regarding the proper recording of the cargo condition, time limits for claims, and the calculation of compensation.

For foreign companies operating in Ukraine, proper contractual regulation of CMR liability, as well as maintaining appropriate documentary evidence, is essential for minimising logistics and litigation risks.

For example, if, when accepting the cargo, the carrier did not indicate any remarks regarding the condition of the packaging in the CMR consignment note, and damage to the goods is discovered upon delivery, it becomes difficult to determine the exact moment when, and through whose fault, such damage occurred. In such cases, the initial recording of the condition of the cargo in the transport documents is decisive.

Situations also often occur when the CMR consignment note is signed by only one of the parties or the consignee's signature is missing. In such a case, difficulties arise in confirming the fact of proper completion of transportation and the moment of transfer of responsibility for the cargo.

In practice, consistency of all accompanying documents is also important. Discrepancies between the CMR consignment note, invoice, packing list or customs declaration may create additional questions regarding the identification of the cargo and its characteristics.

Proper completion of the CMR consignment note reduces the risks of disputes between the parties and ensures a proper evidentiary basis in the event of claims.

#### **4. Cross-border transportation risks in Ukraine**

Cross-border transportation involving Ukraine may entail additional operational and legal risks related to border controls, changing logistics routes, wartime restrictions, customs inspections, and coordination between multiple transportation providers. International manufacturers, suppliers, and logistics companies should therefore carefully structure their transportation agreements and clearly allocate responsibilities among all parties involved in the supply chain.

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Allocation of risks in international transportation is directly related to determining the moment when responsibility for the cargo passes from one party to another. In practice, this issue most often becomes the subject of disputes between counterparties.

The general approach is that the carrier is responsible for the safekeeping of the cargo from the moment of its acceptance until the moment of delivery to the consignee. At the same time, the limits of this liability depend on the terms of the agreement, transport documents and international regulation, in particular the provisions of the Convention on the Contract for the International Carriage of Goods by Road.

During transportation, delays often occur at the customs control stage. For example, the cargo arrives in the country of destination, but due to errors in customs documents it is delayed for several days. In such situations, the question arises whether the carrier is liable for late delivery if the delay was caused by actions of third parties or deficiencies in customs clearance on the part of the consignor.

Situations are also common in practice when the parties agree on delivery within a "limited time window", without specifying the consequences of a breach. As a result, even a minor deviation from the agreed deadlines may lead to disputes regarding penalties or compensation for damages.

The terms of the agreement also play a separate role, since they determine the moment of transfer of risks between the parties. For example, when the cargo is transferred to the carrier, the risk of its loss or damage may pass to the buyer even before completion of the delivery, depending on the terms agreed by the parties.

The issue of the limits of the carrier's liability is also important. Liability is often limited by international transportation rules and the agreement terms, so even in the event of significant losses, the amount of compensation may be substantially lower than the actual damages.

## 5. Force majeure and wartime logistics risks

The wartime environment in Ukraine continues to create significant logistical challenges for international transportation. Restrictions related to military operations, temporary closure of checkpoints, air raid alerts, infrastructure damage and delays at borders may substantially affect transportation deadlines and contractual performance. In such situations, proper force majeure clauses and timely documentary confirmation of delays become critically important for protecting the parties from liability.

During international transportation, situations often arise when performance of obligations becomes impossible or significantly complicated due to circumstances beyond the parties' control. In such cases, the issue arises of exemption from liability for breach of delivery deadlines or terms.

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In practice, such situations most often include events related to the security situation, traffic restrictions and administrative decisions of state authorities.

For example, during a period of military operations or aggravation of the security situation, restrictions may be imposed on the movement of freight transport along certain routes or in certain regions. In such cases, the carrier is in fact unable to perform delivery within the agreed deadlines, even if all necessary documents and resources are available.

Another common case concerns queues and restrictions at borders. For example, due to intensified customs control or temporary closure of certain checkpoints, vehicles may remain idle at the border for a long time. This directly affects delivery deadlines, although it does not always depend on the carrier's actions.

A separate category consists of delays related to actions of third parties, in particular customs or border authorities, when inspections of cargo take significantly longer than expected when planning the transportation.

In such situations, the proper qualification of the circumstances, their proper documentary confirmation, and immediate notification of the counterparty about the delay are of key importance, since this determines the possibility of releasing a

party from liability for breach of deadlines or other terms.

## 6. Customs and tax issues in international transportation

International transportation of goods to and from Ukraine also involves customs clearance procedures, VAT formalities and documentary compliance requirements. Incorrect customs valuation, errors in customs codes or incomplete supporting documentation may lead to cargo delays, additional customs payments or disputes with customs authorities. Proper coordination between carriers, customs brokers and foreign companies is essential for reducing customs and tax risks.

Without proper formalisation the cargo cannot be legally moved across the border and released into the customs regime of the destination country. In practice, a significant part of delays in international transportation arises precisely from errors or inaccuracies in customs documents. For example, incorrect indication of the goods code or its value may lead to an additional inspection of the cargo and suspension of its clearance.

Situations are also common when accompanying documents, in particular the invoice or packing list, are missing or incompletely formalised. In such cases, customs authorities may require additional explanations or documents, which in fact increases delivery deadlines.

Particular attention should also be paid to determining the customs regime. For example, depending on the purpose of moving the cargo, the import, transit or temporary admission regime may apply. Incorrect determination of the regime may lead to additional customs payments or the need to re-clear the cargo.

Tax aspects are also important for the parties to transportation. In particular, this concerns the correct determination of the tax base, application of value added tax upon import of goods and confirmation of the buyer's right to a tax credit.

Situations often occur when, due to errors in the formalisation of documents, the buyer cannot confirm the VAT tax credit, which in fact increases the financial burden on the transaction.

Correct customs and tax formalisation of international transportation is a critical element that affects not only delivery deadlines, but also the overall cost and financial efficiency of the transaction.

### About DLF attorneys-at-law

DLF attorneys-at-law advises foreign manufacturers, logistics companies, suppliers, and international investors on cross-border transportation, CMR liability, customs and VAT matters, contractual structuring, and logistics risks in Ukraine.

Our legal services include the drafting and review of transportation agreements, implementation of risk allocation mechanisms, dispute resolution, force majeure analysis, customs compliance, and ongoing legal support for international transportation and supply chain operations involving Ukraine.