

**1st International Cargo Recovery Conference**

**The legal and Business Aspects of Handling  
Ocean, Air, Rail & Motor Claims**

**Practical Aspects of  
Italian Recovery Law**

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**Relevant time-bars and times to  
claim for ocean, truck and air  
shipments**

**DOMESTIC ROAD CARRIAGE  
DOMESTIC MULTIMODAL OR COMBINED CARRIAGE**

Art. 1696 c.c. (2<sup>a</sup> para.), as modified by art. 10 of D. Lgs.  
286/2005:

Time Bar: 1 year (no more 5 years as in the old regime)

**INTERNATIONAL ROAD CARRIAGE  
INTERNATIONAL MULTIMODAL CARRIAGE**

CMR Convention (ratified in Italy by Law 6.12.1960, n.  
1621), and Art. 1696, 2<sup>a</sup> para. , c.c.

Time Bar: 1 year but in case of willful misconduct or gross  
negligence 3 years

**DOMESTIC SEA CARRIAGE (CABOTAGE)**

Time Bar: 6 months  
but if carriage start or ends outside Europe or  
Mediterranean countries: 1 (one) year.

**INTERNATIONAL SEA CARRIAGE**

**HAGUE VISBY RULES (Brussels Conv. 1924  
modified by Brussels Protocols 1968 and  
1979:**

**Time Bar: 1 (one) year from actual or  
agreed delivery**

**Hamburg Rules (Hamburg Conv. March  
30th 1978, in force but not ratified by  
Italy):**

**Time Bar: 2 (two) years from effective or  
agreed delivery**

## **INTERNATIONAL AIR CARRIAGE**

**Montreal Convention 28th May 1999:**

**Time Bar: 2 (two) years running from the date of arrival of cargo at destination or from the date on which the aircraft was scheduled to arrive at destination or from the date on which the shipment was interrupted. The method of calculation of the time bar period is regulated by the law of the court seized.**

## **DOMESTIC AIR CARRIAGE**

**ART. 953 CODE OF NAVIGATION:**

**Time Bar: 2 (two) years running from the date of arrival of cargo at destination or from the date on which the aircraft was scheduled to arrive at destination**

## **Package Limits for different types of claims**

### **DOMESTIC ROAD CARRIAGE DOMESTIC MULTIMODAL OR COMBINED CARRIAGE**

Art. 1696 c.c. (2° para.), as modified by art. 10 of D. Lgs. 286/2005:

1 Euro per each Kilo of gross weight of lost or damaged cargo

### **INTERNATIONAL ROAD CARRIAGE INTERNATIONAL MULTIMODAL CARRIAGE**

Art. 23, para. 3, CMR Convention (ratified in Italy by Law 6.12.1960, n. 1621), and Art. 1696, 2° para. , c.c.

SDR 8,33 per Kilo of gross weight of lost or damaged cargo

1 SDR = approx. Euro 1,15  
(thus approximately Euro 9,57/Kilo)

### **DOMESTIC SEA CARRIAGE (CABOTAGE)**

Art. 423, first para., code of navigation :

103,29 Euro per each cargo unit (or up to the value declared by shipper before loading)

### **INTERNATIONAL SEA CARRIAGE**

Art. IV, (5)(a) HAGUE VISBY RULES (Brussels Conv. 1924 modified by Brussels Protocols 1968 and 1979:

SDR 666,67 per package or unit or SDR 2 per kilo of gross weight of lost or damaged goods, whichever is the higher (save for higher values declared at loading)

**Art. 6, (1)(a) Hamburg Rules (Hamburg Conv. March 30th 1978, in force but not ratified by Italy):**

SDR 835 per package or unit or SDR 2,5 per kilo of gross weight of lost or damaged goods, whichever is the higher (save for higher value declared at loading)

**INTERNATIONAL AIR CARRIAGE**

Art. 22 n. 3 Montreal Convention 28th May 1999:

SDR 17 per kilo in case of destruction, loss or delay, save for special declaration of interest at destination effected by the sender/shipper at the time of delivery of cargo to the carrier

No breaking of limitation is allowed in favor of carrier

**DOMESTIC AIR CARRIAGE**

Art. 952 code of navigation (1st para.):

Euro 15,49 per kilo unless willful misconduct or gross negligence and save when higher values are declared at time of loading

**DOMESTIC RAIL CARRIAGE**

Art. 50 DPR 197/1961:

Euro 18,07 per kilo of lost or damaged cargo

**INTERNATIONAL RAIL CARRIAGE**

Art. 30 Uniform Rules for International Rail Carriage of Cargo (CIM-COTIF), Vilnius 3.6.1999 (Appendix B):

SDR 17 per kilo of gross weight

**USUAL TIME FOR CASES TO BE  
PENDING IN COURTS:**

2 to 6 months for settlement

2 to 3 years for a first instance  
judgment (trial costs are recovered by  
the losing party)

**NORMAL FEE ARRANGEMENTS FOR CARGO  
RECOVERY CASES:**

A. If security is available before commencement of  
cargo recovery (by way of arrest or otherwise)

NO WIN NO FEE (NO CURE NO PAY) 10%  
(PLUS OUT OF POCKET EXPENSES DOCUMENTED)

B. If security is not available:

NO WIN NO FEE (NO CURE NO PAY) 20-25%  
(PLUS OUT OF POCKET EXPENSES DOCUMENTED)

C. Cost and fees of arrest of ship are always  
charged but capped at Euro 5,000 per claim  
inclusive of court duties, costs and Marshall  
duties

**UNUSUAL POSITIVE ASPECTS OF CARGO LAW:**

1. Copies of documents are generally accepted;
2. Free translations are generally accepted;
3. In road carriage claims theft and robbery are not considered automatically force majeure or act of god exempting the carrier from liability;
4. Gross negligence breaks limitation in domestic claims (sea, road, rail, air)
5. Gross negligence in road carriage claims is not difficult to be proved
6. First instance ruling is immediately enforceable against carrier even pending time to appeal or actual appeal

**UNUSUAL NEGATIVE ASPECTS OF CARGO LAW:**

1. Power of attorney is required
2. Great Attention to Title to sue (when insurers are acting then subrogation receipt and release must be signed by those legitimated under the contract of carriage to act against the carrier - in case of loss receivers are legitimated only if they applied for redelivery, otherwise title rests with shipper/sender)
3. Subrogation receipt and release is not enough to prove the insurance contract and the actual signed policy is (often) needed
4. Letter of claim by insurers or cargo settling agents could not be considered as suitable to interrupt time bar unless insurers have indemnified the claim

**The MTO in the practice of the logistic industry is an international Carrier (not a forwarder)**

**Network & Segment Liability**

**Network Liability** is defined as the liability of the carrier for loss of or damage to cargo carried in a combined transport operation when ruled according to an uniform contractual discipline independently from any specific logistic segment in which the event occurs

**Segment Liability** is defined instead as the liability of the carrier for loss of or damage to cargo carried in a combined transport operation when ruled in direct connection with the international or domestic regime of the particular logistic segment of the combined transport in which the event occurs

**The Network Liability system is the privileged model in Italian case law and in a substantial lack of specific legislation. Usual reference is made to the civil code and to art. 1683 and following.**

**Art. 1696, (new) second paragraph, c.c. :**

**Domestic Carriage = Domestic Road Carriages and Domestic Multimodal Carriages**

**International Carriage = International Road Carriages (CMR) and International Multimodal carriages**

**Where the Carrier (MTO) wish to amend the legal regime of the Network Liability, which our system submits otherwise to the provisions of the civil code, he MUST do it by contract.**

The Segment Liability is of a contractual nature and therefore must be agreed upon specifically in suitable forms.

**Segment liability:  
Italian legislative news in road  
carriage**

**Legislative Decree 21.11.2005, n. 286  
New Rules regarding liberalization in the  
road carriage industry**

### JOINT LIABILITY

The shipper, sender and owner of the cargo are concurrently liable with the (road) carrier for damages to third parties and for administrative fines (up to confiscation of goods carried on board) every time that they failed to prove having given detailed written instructions to carrier in connection with:

- (1) gauge/dimensions limits of cargo
- (2) weight/mass limits
- (3) speed limits
- (4) proper stuffing, lashing and securing of cargo on board
- (5) minimum compulsory rest periods during driving.

and every time that they fail to ascertain the fulfillment by the carrier of the national mandatory rules related to :

- (6) driving license,
- (7) administrative license to carry out business,
- (8) regular payments of social contributions to national pension fund for drivers employed by the carrier
- (9) in case of non italian carrier the possession of a regular licence to operate in Italy/EU countries

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