Comparison of freight forwarder liability in selected countries of the European Union and selected countries of the Commonwealth of Independent States (CIS)

M Poliak¹, E Salamakhina¹, N Lakhmetkina², N Zhuravleva³

¹ Department of Road and Urban Transport, University of Žilina, Univerzitná 1, 010 26 Žilina, Slovakia
² Transportation Economics Department, Petersburg State Transport University, Moskovskij prospect, 9, St. Petersburg 190031, Russian Federation
³ Emperor Alexander I St. Petersburg State Transport University, 9 Moskovsky pr., Saint Petersburg, 190031, Russian Federation

* salamakhinaekaterina@gmail.com

Abstract. The continuous flow of movement of goods on the world market forces manufacturers to turn to intermediaries who are able to organize cargo transportation services. At the moment, the most common intermediary is a freight forwarder. This article defines the understanding of the term freight forwarder, its role in the supply chain, as well as the risks associated with transportation. This article analyses the part of forwarding contract which deals with a limitation of the forwarder's liability. The limitation of the forwarder's liability allows predicting the amount of compensation to the cargo owner in case of damage or loss of goods. In addition to the previously conducted analysis of the freight forwarder's liability in the selected countries of the European Union, an analysis of the responsibility of freight forwarders in the selected CIS countries was carried out. Among other things, it was determined which national regulations regulate freight forwarding activities in these countries. The limitations of the liability of freight forwarders proposed by the conditions of the expedition of the national Associations of logistics and forwarding, compiled on the basis of the standard rules of the FIATA organization, are also considered.

Keywords: road safety, safety, road accident

1. Introduction

Since ancient times, mankind has embarked on the path of international trade. Naturally, with the geographical expansion of the market came the development of transport. In the conditions of modern globalization and large flows of goods, the demand for forwarding companies is huge.

The freight forwarder is an intermediate link between the client and the cargo carrier. The tasks of the forwarder may include such tasks as the organization of loading and unloading of goods, storage, consolidation, packaging, labelling, selection of performers, documentation, carrying out operations during customs control.

In addition to attracting third-party performers, freight forwarders can carry out cargo transportation by their own forces and vehicles. In the process of transportation, road, rail, water, and air transport can be used separately or in any combination thereof [1].

In addition to the service role, it is necessary to study the legal role of the forwarder. The main factor determining the legal role of the forwarder is the entire course of business relations between the
forwarder and the shipper, including the contractual terms of the contract. This means that in any specific claim against the freight forwarder after damage or loss of cargo, the court is likely to consider a general or comprehensive agreement(s) between the shipper and the freight forwarder and a specific contract(s) of carriage related to the carriage of the relevant cargo. The freight forwarder may act contractually as a principal, agent, carrier, or some other legal mixture or hybrid [2].

Sometimes it may be unclear how the forwarder differs from the intermediary. The answer may be as follows: if a logistics service provider acts as an intermediary for any type of cargo transportation services, it can be classified as a freight forwarder recognized in the market and can join the relevant national or international associations. But if a logistics service provider offers only basic transportation, warehousing, packaging, or other logistics services, it cannot be recognized as a freight forwarder [3].

The freight forwarder undertakes, for remuneration and at the expense of the client, to perform, or arrange for the performance of services related to cargo transportation specified in the expedition contract. In case of realization of the service by the forwarder, a forwarding contract is concluded between him and the client. In turn, a freight forwarder and a cargo carrier conclude a contract on cargo transportation.

In the case of the provision of services by an intermediary, a mediation agreement, a mandate agreement, or a representation agreement is concluded between him and the client, which obliges the intermediary to provide the service of finding a suitable carrier or other third party whose services are needed by the client. Within the framework of these relationships, the contract of carriage will be concluded directly between the client and the cargo carrier [1].

Recently, multimodal cargo transportation has been developing a lot, connecting together almost all transport industries and transport technologies in international transport corridors. As part of this type of transportation, freight forwarders act as multimodal transportation operators. The role of the forwarder in this case changes. The responsibility of the multimodal transport operator is complicated due to the fact that it acts on behalf of its customer. His legal position in the multimodal transportation contract makes him even more responsible due to the fact that the multimodal transportation operator is also responsible for the work of all other persons who were hired by him [4].

The network system of responsibility links the multimodal transport operator in accordance with the laws and institutions for the part of transit where the incident occurred. This means that the multimodal operator is bound by the relevant laws, depending on which branch of transport the accident occurred in: road laws cover road parts of transport, marine laws - marine parts, etc. Also, the situation of multimodal transport operators is complicated by the fact that there is no single liability insurance for MTO [5].

Regulation of the forwarder's access to the market is carried out by each state separately. In some countries, entrepreneurs wishing to carry out forwarding activities must obtain an appropriate license, but in some countries, it is sufficient to meet the general requirements that allow conducting unlicensed business activities [6].

In Slovakia, access to the implementation of forwarding activities can be granted only if the entrepreneur meets not only the general requirements of entrepreneurship, but also meets the requirements necessary to obtain the appropriate license:

- higher specialized education
  or
- secondary education in this field and one year of work experience in this field
  or
- certificate of completion of an accredited training program in this field and two years of work experience in this field [7].

According to the results of the analysis of some countries of the European Union, it was revealed that a company or a person who does not have professional training or professional representation in seven of the analysed countries, such as Bulgaria, Croatia, Czech Republic, Germany, the Netherlands, Sweden, and the United Kingdom, can be a freight forwarder. In these countries, freight forwarding is
an unregulated trade, which means that anyone who meets the general conditions of doing business can do business in the field of freight forwarding.

The mandatory conditions for obtaining a business license in other countries vary, but the requirements are reduced to:

- Availability of education - secondary or higher. In some countries, education should be specialized. Sometimes the alternative may be successful completion of certain professional courses.
- Successful completion of professional tests and exams.
- Experience in the field of forwarding in a management position.
- Financial guarantees of the entrepreneur.
- Other responsibilities include, for example, a certificate of professional experience, which is issued by a person who provides daily management of the company
- Registration in the freight forwarder's register.
- Another important condition is proof of honesty. This means that the applicant has no managers, members of the board of directors and technical directors with a criminal record and so on [8].

2. Risks and responsibilities of freight forwarders.

Cargo transportation is an activity involving a large number of associated risks. The main risk factors are:

- Technical risk that may be associated with the condition of the vehicle and the condition of the loading equipment, which are in unsatisfactory condition. This risk can lead to a traffic accident and an accident at work, which will affect not only the condition of the cargo, but also the life of the driver and loader.
- Infrastructure risk is associated with the condition of the road. This factor can affect both the safety of the transported cargo and the planning of the transportation route.
- The risk of natural disasters may lead to deterioration of visual characteristics during transportation and may lead to a traffic accident, which will undoubtedly affect the condition of the cargo.
- The risk of an unpredictable event may arise due to the risks of theft, which directly affect the loss of cargo and damage to cargo as a result of the actions of robbers [9].

Each of the above risks can lead to consequences such as delayed delivery of goods, partial or complete damage to the cargo or its loss. It is important to understand what responsibility the freight forwarder bears for these consequences.

An urgent problem is the absence of any international treaties or conventions that would regulate forwarding activities.

In each country, the responsibility of the forwarder is regulated in accordance with national legislation, which creates certain difficulties in the implementation of international forwarding activities. Clients are forced to study the laws of different countries regulating the liability of freight forwarders if they work with freight forwarders from other states. A similar problem arises for freight forwarders, if they contract freight forwarders from other countries to carry out freight forwarding activities.

The freight forwarder has the right to limited liability, which ensures economic stability and allows predicting possible monetary compensation to the cargo owner. These restrictions are usually not established by law. The maximum amount of the freight forwarder's responsibility is established when signing the forwarding contract. One of the exceptions is the legislation of the Russian Federation, which in the Federal Law of 30.06.2003 N 87-FZ (ed. of 18.03.2020) "On freight forwarding activities" directly specifies the limitation of the forwarder's liability. However, article 11 of this law states that the freight forwarding contract may provide for a higher amount of the forwarder's liability in comparison with the amount of liability established by this Federal Law or an international agreement of the Russian Federation [10].

More and more forwarding companies are joining freight forwarders' associations, the purpose of which is to represent and protect the interests of freight forwarders who are members of these associations. Among other things, these associations provide an opportunity for their members to use
standard expedition contracts, forwarding conditions, and so on, drawn up to supplement the existing national legal norms and not contradict them.

In Slovakia, this association is Association of Logistics and Freight Forwarding of the Slovak Republic, which provides General Freight Forwarder’s conditions of Association of Logistics and Freight Forwarding of the Slovak Republic. Their purpose is to further amend and supplement the provisions of sections 601 - 609 of the Commercial Code on the forwarding contract.

As a rule, the forwarding conditions proposed by the associations of freight forwarders are based on the FIATA model rules governing forwarding activities. FIATA is an international federation of freight forwarders' associations. The documents of this organization contain important terms and conditions in terms of obligations that are accepted by the transport agent issuing this FIATA document [11].

These rules apply only when they are included in the forwarding contract in writing or in any other form as a reference to the standard FIAT conditions governing forwarding activities [12].

The limitation of liability can be specified both in the currency of the country and in units of Special Drawing Right (SDR/XDR). Special drawing rights were created as an additional international reserve asset in the context of the Bretton Woods fixed exchange rate system. The SDR is neither a currency nor a claim on the IMF. Rather, it is a potential claim on the freely usable currencies of IMF members. SDRs can be exchanged for these currencies [13].

3. Responsibility of freight forwarders in the EU countries.

Previously, the size of the maximum liability in selected EU countries was investigated. In Slovakia, according to the General Freight Forwarder’s conditions of Association of Logistics and Freight Forwarding of the Slovak Republic, the freight forwarder's responsibility is:

- in case of damage to the cargo during transportation by a vehicle or during loading and unloading operations related to transportation (during loading, transportation, loading, unloading), the amount of damage is limited to 8.33 XDR per 1 kg of gross weight of damaged, destroyed or lost goods, the maximum amount is 20 000 XDR per case of damage.,
- if the damage is caused by late delivery of the shipment, the freight forwarder's obligation to compensate the damage is limited to the agreed amount of remuneration to the carrier.
- in the case of warehouse services, the freight forwarder's liability for lost, damaged or destroyed goods is limited to the amount:
  - 3.925 XDR per 1 kg of gross weight of damaged, lost or destroyed goods; however, the maximum amount is 3 925 XDR one damage case (one party),
  - 19 625 XDR, if the damage caused to the investor (client), consists of the difference between the desired and actual state of the stored goods.,
- in the cases of other damages liability of the freight forwarder for damages will be limited to 20 000 XDR per one case of damaged.

General Freight Forwarder’s conditions of Association of Logistics and Freight Forwarding of the Slovak Republic applies to commercial relations between principals and freight forwarders in the field of national and international freight forwarding, provided that they become part of the freight forwarding agreement [14].

Analysis of other selected EU countries showed that the freight forwarder's liability is limited in accordance with the forwarding conditions and can range from 1.09 EUR/kg (Austria) to unlimited freight forwarder's liability (Croatia). In most of the analysed countries, the freight forwarder's liability is limited to 8.33 XDR per kilogram of damaged or destroyed goods, as in the Slovak Republic (Slovakia, Italy, Estonia, Czech Republic, Finland, Norway, Denmark, and Sweden). The freight forwarder's liability is maximally limited from 1.09 EUR/kg for damage in Austria to unlimited liability (in Croatia, Italy). In most of the analysed countries, the maximum liability of the forwarder is 50 000 XDR for one case of damage, which corresponds to the cost of 56 200 EUR [15].

4. Responsibility of freight forwarders in selected CIS countries

The purpose of this article is to analyse the responsibility of freight forwarders in the CIS countries. Without regard to the fact that the CIS is a separate economic zone, trade relations between these countries and the EU countries are quite intense (Figure 1). This fact implies frequent interaction of
market participants, which leads to the need to consider the possibility of combining the conditions of international forwarding.

4.1. Responsibility of freight forwarders in the Russian Federation

In the Russian Federation, the activities of freight forwarders are regulated by the Civil Code and the Federal Law of 30.06.2003 N 87-FZ (ed. of 18.03.2020) "On freight forwarding activities". Chapter 41 of the Civil Code of the Russian defines the freight forwarding contract, responsibility, documents provided to the forwarder, etc. [17]. The amount of the freight forwarder's responsibility in the Russian Federation is determined by the Federal Law "On Freight Forwarding Activities" dated 30.06.2003 No. 87-FZ (latest edition). The freight forwarder's liability is limited to 2 SDR per kilogram of gross weight of lost or damaged cargo or 666.67 XDR per place or other unit of shipment [18]. The Russian Association of Forwarding and Logistics Organizations announces the FIATA model rules, and also duplicates information on the limitation of liability of freight forwarders, defined by the law on freight forwarding activities [19].

4.2. Responsibility of freight forwarders in Ukraine

In Ukraine, forwarding activity is regulated by Chapter 65 of the Civil Code of Ukraine [20], as well as the Law of Ukraine on Freight Forwarding Activities of July 5, 2012, No. 5060-VI, which describes in more detail the conditions of freight forwarding, but does not establish a certain amount of responsibility of the forwarder [21]. The amount of liability can be established in accordance with the freight forwarding agreement concluded between the freight forwarder and the client. The International Association of Freight Forwarders of Ukraine offers conditions for freight forwarding activities. In accordance with these conditions, the liability for loss/damage of the goods cannot exceed the equivalent of 2 SDR per kilogram of gross weight. The liability of the freight forwarding company for losses of any kind should not exceed the total amount of 10 000 SDR for each case. In case of a delay in the delivery of goods, the forwarder returns to the client the remuneration received earlier for the implementation of freight forwarding activities [22].

4.3. Responsibility of freight forwarders in the Republic of Belarus

Regulation of freight forwarding activities in the Republic of Belarus is carried out by the Civil Code of the Republic of Belarus [23] and the Law of the Republic of Belarus on June 13, 2006, No. 124-ZO of freight forwarding activities [24].

In the case of using a contract concluded by members of the Belarusian Association of Freight Forwarders, the following limitation of the forwarder's liability is established:
• the freight forwarder's liability is limited to an amount not exceeding 666.67 XDR per piece or other unit of shipment, or 2 XDR per one kilogram of gross weight of lost or damaged cargo, whichever is higher.
• if the cargo delivery does not include transportation by sea or by inland waterways, the freight forwarder's liability is limited to an amount not exceeding 8.33 XDR per kilogram of gross weight of the lost or damaged cargo.
• the freight forwarder's liability for damage resulting from a delay in the delivery of the cargo is limited to an amount not exceeding the freight charges due for the cargo delayed by delivery.
• the freight forwarder loses the right to limitation of liability if it is proved that the losses caused by loss, damage or delay in delivery were the result of actions or omissions of the freight forwarder committed with the intent to cause such losses [25].

4.4. Responsibility of freight forwarders in the Republic of Kazakhstan
The activity of freight forwarders in Kazakhstan is determined by the Civil Code of the Republic of Kazakhstan [26].

When concluding a forwarding contract with members of the Association of National Freight Forwarders of the Republic of Kazakhstan, the freight forwarder cannot be held responsible for the loss of goods and damage caused to the goods in an amount exceeding the equivalent of 2 XDR per one kilogram of gross weight of the lost or damaged cargo [27].

4.5. Comparison of freight forwarder’s liability limitations in the CIS countries
Table 4 shows the legislation regulating freight forwarding activities, associations of freight forwarders, as well as the limitation of liability of freight forwarders in selected countries.

| A country              | Legislation regulating freight forwarding activities. | The amount of the freight forwarder's liability in accordance with the legislation. | Association of Freight Forwarders operating in the country. | The amount of liability determined by the contract of the association of freight forwarders. |
|------------------------|-------------------------------------------------------|--------------------------------------------------------------------------------|------------------------------------------------------------|----------------------------------------------------------------------------------|
| Russian Federation     | Civil Code of the Russian Federation Federal Law No. 87-FZ of 30.06.2003 "On Freight Forwarding Activities" | 2 XDR per kilogram of gross weight 666.67 XDR per piece or other unit of shipment | Russian Association of Forwarding and Logistics Organizations | In accordance with the current legislation.                                      |
| Ukraine                | The Civil Code of Ukraine The Law of Ukraine on Freight Forwarding activities | In accordance with the transport forwarding agreement | Association of International Freight Forwarders of Ukraine | 2 XDR per kilogram of gross weight 10 000 XDR for each case.                     |
| Republic of Belarus    | Civil Code of the Republic of Belarus LAW OF THE REPUBLIC OF BELARUS No. 124-ZO of Freight Forwarding activities, on June 13, 2006 | Amount by which the value of the cargo has decreased, and if it is impossible to restore the damaged cargo – in the amount of its value | Association of International Freight Forwarders and Logistics | 2 XDR per kilogram of gross weight 8.33 SDR per kilogram of gross weight (if cargo delivery does not include transportation by sea or by inland waterways) 666.67 XDR per piece or other unit of shipment |
Republic of Kazakhstan

**Civil Code of the Republic of Kazakhstan**

**Amount by which the value of the cargo has decreased, and if it is impossible to restore the damaged cargo in the amount of its value**

**Association of National Freight Forwarders of the Republic of Kazakhstan**

2 XDR per kilogram of gross weight

The general indicator of limitation of liability is 2 XDR per one kilogram of gross weight.

In the study Poliak M. and Šimurková, P. [15] a solution was proposed to combine the responsibility of freight forwarders in selected EU countries by averaging the data obtained:

- 5.10 €/kg gross weight of damaged, lost or destroyed goods
- 23 000 EUR for one case of damage.

This proposal has not yet been put into practice. Given that freight forwarders not only provide their activities within EU member states but also provide their services within non-EU countries, it is desirable that an international legal standard be adopted that unifies the responsibility of freight forwarders. Difference in the restriction of shippers is not unified even in the CIS member countries. However, it can be concluded that the limitation of liability in these countries is at a higher value when compared with the proposed limit of liability in Poliak M. and Šimurková, P.

**5. Conclusion**

The role of the freight forwarder is to represent the interests of his client in the activities related to the transportation of the shipment. The freight forwarder acts as an expert and it is assumed that the freight forwarder will be ordered by a client who is not an expert in the field of transport services. Although it is assumed that the client is not an expert in the field of transport services, the current system of different liability of freight forwarders in different countries creates a requirement for the client to monitor the difference in liability and take this into account in the selection of a suitable freight forwarder. It is possible that several clients are not aware of these differences. However, such ignorance creates the preconditions that the client will not decide when choosing a freight forwarder for the freight forwarder with the best conditions. For this reason, legislation is needed that would unify the responsibility of freight forwarders not only in the EU countries but in all FIATA countries.

It is obvious that there is a need to create a single international treaty or convention that would regulate freight forwarding activities, as well as determine the limitation of liability of freight forwarders. When creating this contract, it would be reasonable to refer to the experience of creating existing contracts, such as the CMR Convention, which limits the liability of road carriers in the amount of 8.33 XDR per gross kilogram of lost or damaged cargo, and also obliges cargo carriers to insure their liability. It would be reasonable to propose the task of creating this agreement to such a large-scale organization as FIATA, which currently has rich experience in regulating forwarding conditions at the non-state level.

Further work in this area should also identify the relationship of responsibility of the freight forwarder and the carrier. The freight forwarder procures transportations not only by road transport, but also by rail, water or air transport. However, each mode of transport has a different limitation of liability.

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