






**TRANSPORT  
& LOGISTIK**



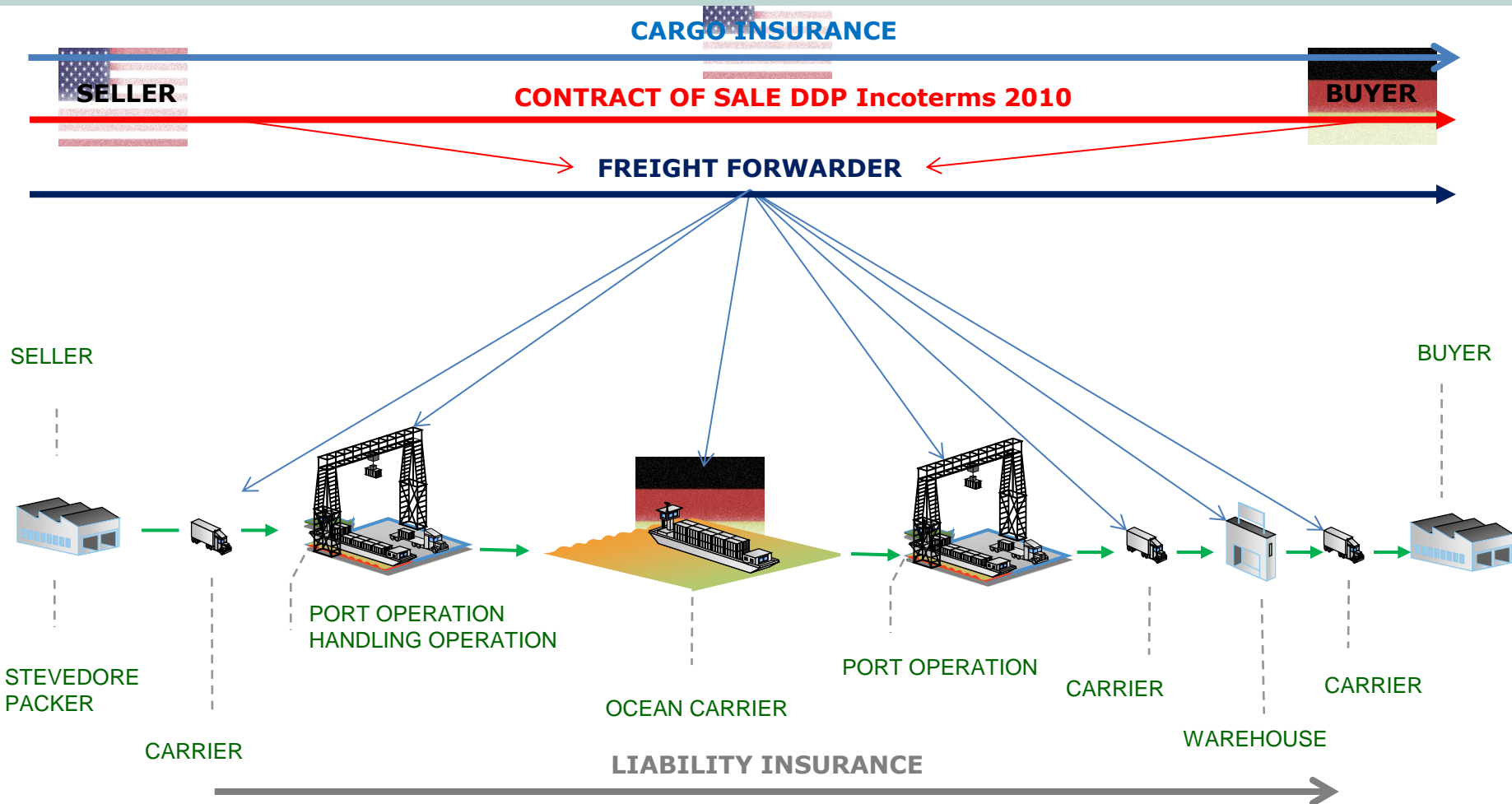
# CARGO CLAIMS IN THE EUROPEAN UNION – PERSPECTIVE OF US CLAIMANT

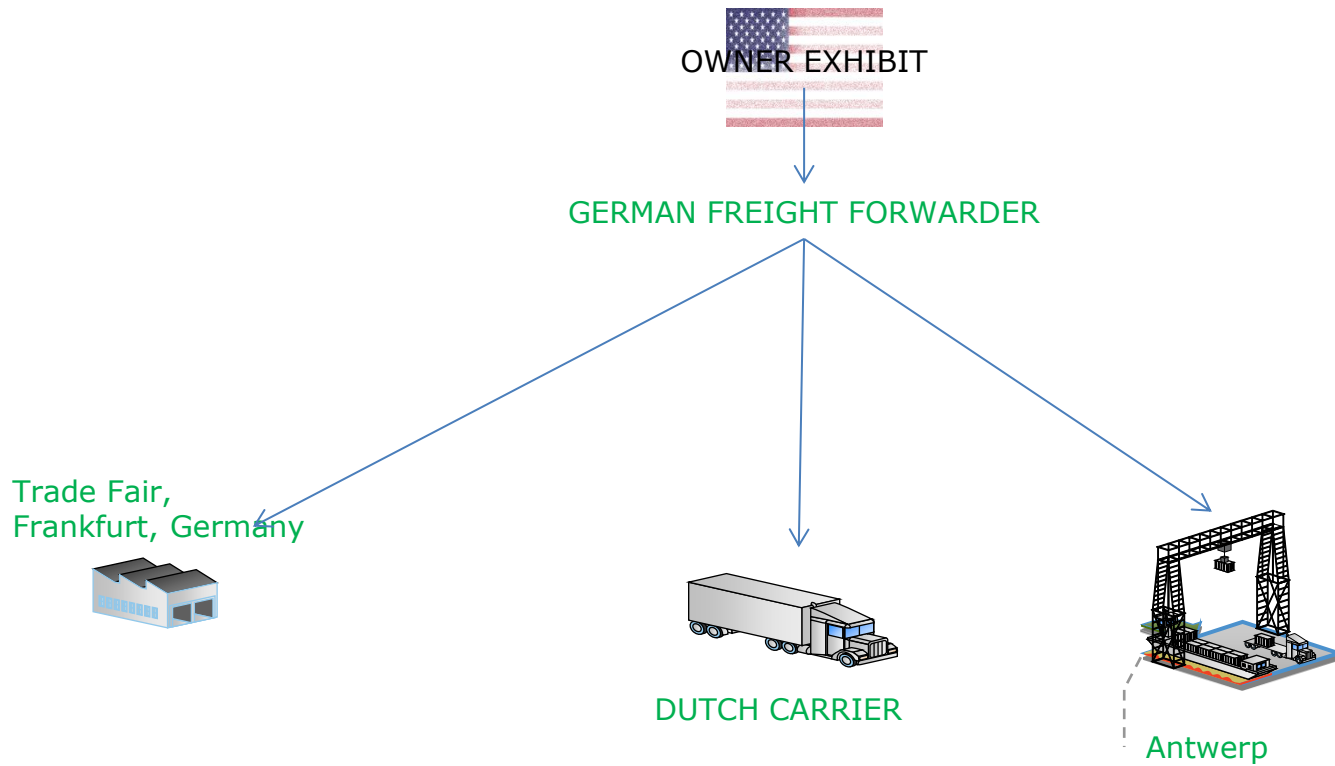


transport  
und logistik

-  INTRODUCTION
-  ACCESS TO CLAIMS FOR US-CLAIMANTS
-  APPLICABLE INTERNATIONAL TRANSPORT CONVENTIONS IN EUROPE
-  DIFFERENCES OF THE APPLICABLE INTERNATIONAL  
TRANSPORT LAWS IN EUROPE
-  BREXIT

# INTRODUCTION





# ACCESS TO CLAIMS FOR US-CLAIMANTS

## PLACE OF JURISDICTION

- ⊗ Main requirement for access
- ⊗ Choice of Parties
- ⊗ Residence of the carrier
- ⊗ Place of delivery
- ⊗ Place of taking over the goods
- ⊗ Choice of best possible jurisdiction

## APPLICABLE LAW

**Rome I Regulation (applicable for all EU-Members):** <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:en:PDF>

### Article 5 Rome I - Contracts of carriage

To the extent that the law applicable to a contract for the carriage of goods has not been chosen in accordance with Article 3, the law applicable shall be the law of the country of habitual **residence of the carrier**, provided that the place of **receipt** or the place of **delivery** or the habitual residence of the consignor is **also situated** in that country. If those requirements are not met, the law of the country where the **place of delivery** as agreed by the parties is situated shall apply.



CONVENTIONS

CMR

MC

CMNI

CIM

INSURER USA

INSURED USA

CARRIER GER

CONSIGNOR ITALY EXW

CONSIGNEE USA = INSURED

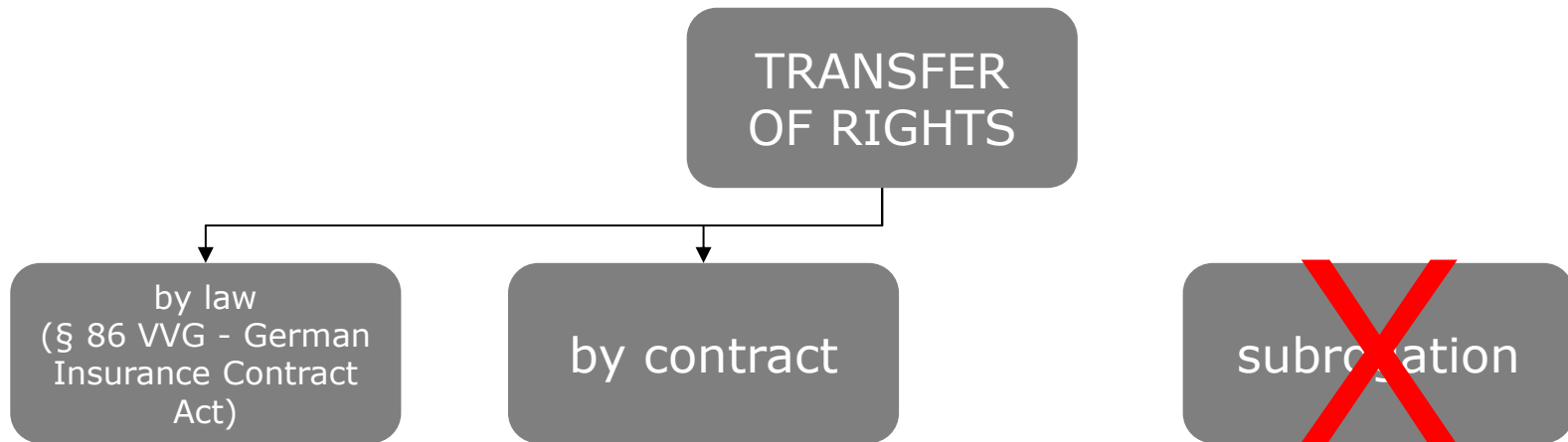
GENOA

New York

- PLACE OF JURISDICTION: GERMANY - ROME I
- NO CONVENTION, MULTIMODAL TRANSPORTATION
- NO CHOICE OF LAW
- PLACE OF TAKING OVER AND DELIVERY, HABITUAL RESIDENCE OF CONSIGNOR NOT IN GERMANY
- US LAW IS APPLICABLE BY GERMAN COURT

## RIGHT TO SUE OF INSURER

- ⊗ Different concepts of right to sue: Assignment vs. Subrogation
- ⊗ In continental Europe Insurers are usually the legal successor of the insured



- Between parties of an insurance contract
  - In the moment of payment
  - In the amount of payment
  - With all rights and burdend with all objections
- By contract of assignment
  - At the time contract is closed or stipulating transfer
  - All rights which are subject matter of contract
  - with all rights and burdend with all objections

## DOUBLE / MULTIPLE INSURANCE IN INTERNATIONAL LAW

- ✕ not uncommon, since carrier sometimes contracts cargo insurance in favor of cargo owners or consignors even if the latter already have coverage;
- ✕ in many jurisdictions, the insurers in such case have to pay in proportion to the amounts for which they are each liable;
- ✕ in international transport, colliding cargo insurance contracts are often subject to different applicable law;
- ✕ Art. 78 Insurance Contract Act: *"If foreign law is applicable to one of the insurances, the insurer to whom foreign law applies may only assert a claim for compensation against the other insurer if he himself is liable to pay compensation under the relevant law."*

# APPLICABLE INTERNATIONAL TRANSPORT CONVENTIONS IN EUROPE



**CMR** - [https://transportrecht.org/wp-content/uploads/CMR\\_ENGL.pdf](https://transportrecht.org/wp-content/uploads/CMR_ENGL.pdf)

The Convention on the Contract for the International Carriage of Goods by Road is a United Nations convention that was signed in Geneva on 19 May 1956. It has been ratified by the majority of European states.



**CIM** - [https://www.cit-rail.org/secure-media/files/documentation\\_de/freight/cim/cim\\_1999\\_2010-12-01\\_fr-de-en\\_rev\\_ns.pdf?cid=55768](https://www.cit-rail.org/secure-media/files/documentation_de/freight/cim/cim_1999_2010-12-01_fr-de-en_rev_ns.pdf?cid=55768)

Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM) – applicable for transports by rail



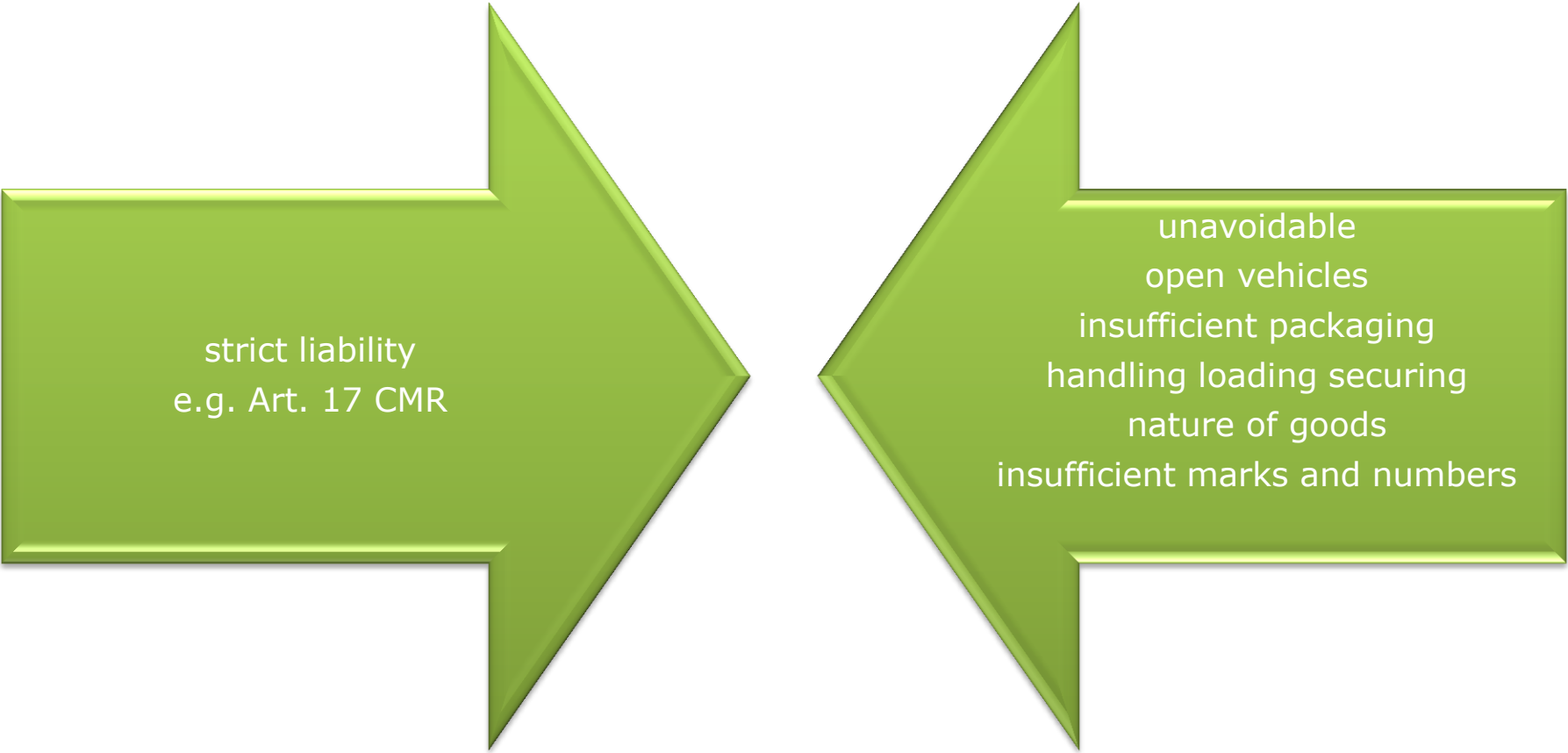
**CMNI** - [https://www.ccr-zkr.org/files/conventions/cmni\\_en.pdf](https://www.ccr-zkr.org/files/conventions/cmni_en.pdf)

Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway



**MC** - [https://www.iata.org/policy/Documents/MC99\\_en.pdf](https://www.iata.org/policy/Documents/MC99_en.pdf)





strict liability  
e.g. Art. 17 CMR

unavoidable  
open vehicles  
insufficient packaging  
handling loading securing  
nature of goods  
insufficient marks and numbers

## Limitations of International Conventions

	Road	Air	Inland Waterway	Train	Ocean
<b>International</b>	8,33/simple freight	19 SDR	2 SDR	17 SDR	666,67 SDR / package – 2 SDR / kg

## Limitations of national laws

	<b>GERMANY</b>	<b>FRANCE</b>	<b>ITALY</b>	<b>NETHERLANDS</b>
<b>limitation</b>	8,33/triple freight	Consignment < 3 t: 23€/kg, max. 750 €  Consignment > 3 t: 14€/kg, max. t x 2.300	1,00 € / kg for loss and damage	3,40 € / kg

# DIFFERENCES OF APPLICATION OF THE INTERNATIONAL TRANSPORT LAWS IN EUROPE



## **FRANCE**

- Right to sue very strict and has to be handled with care
- Gross negligence was changed to inexcusable negligence



## **ITALY**

- CMR only applicable when agreed, possibility to obtain unlimited liability
- long court procedures



## **NETHERLANDS**

- Almost impossible to obtain unlimited liability



## **GERMANY**

- Unlimited liability in cases of gross negligence, most frequent case: gross organizational negligence

# IMPACTS OF BREXIT



## ISSUES

Current uncertainty of the situation in case of “no agreement”-Brexit regarding:

- Services – no more freedom of service within the EU, e.g. for lawyers:

UK/EU-27 relationship regarding legal services would in case no agreement is found be governed by GATS (General Agreement on Trade in Services). Rather than one legal framework, legal services would/will be subject to a multitude of rules and regulations in each of the 31 EU/EFTA states.

- Personnel
- Development remains unclear in case no agreement is reached

HERZLICHEN DANK! THANK YOU  
FOR YOUR ATTENTION!





## KÖLN | COLOGNE

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