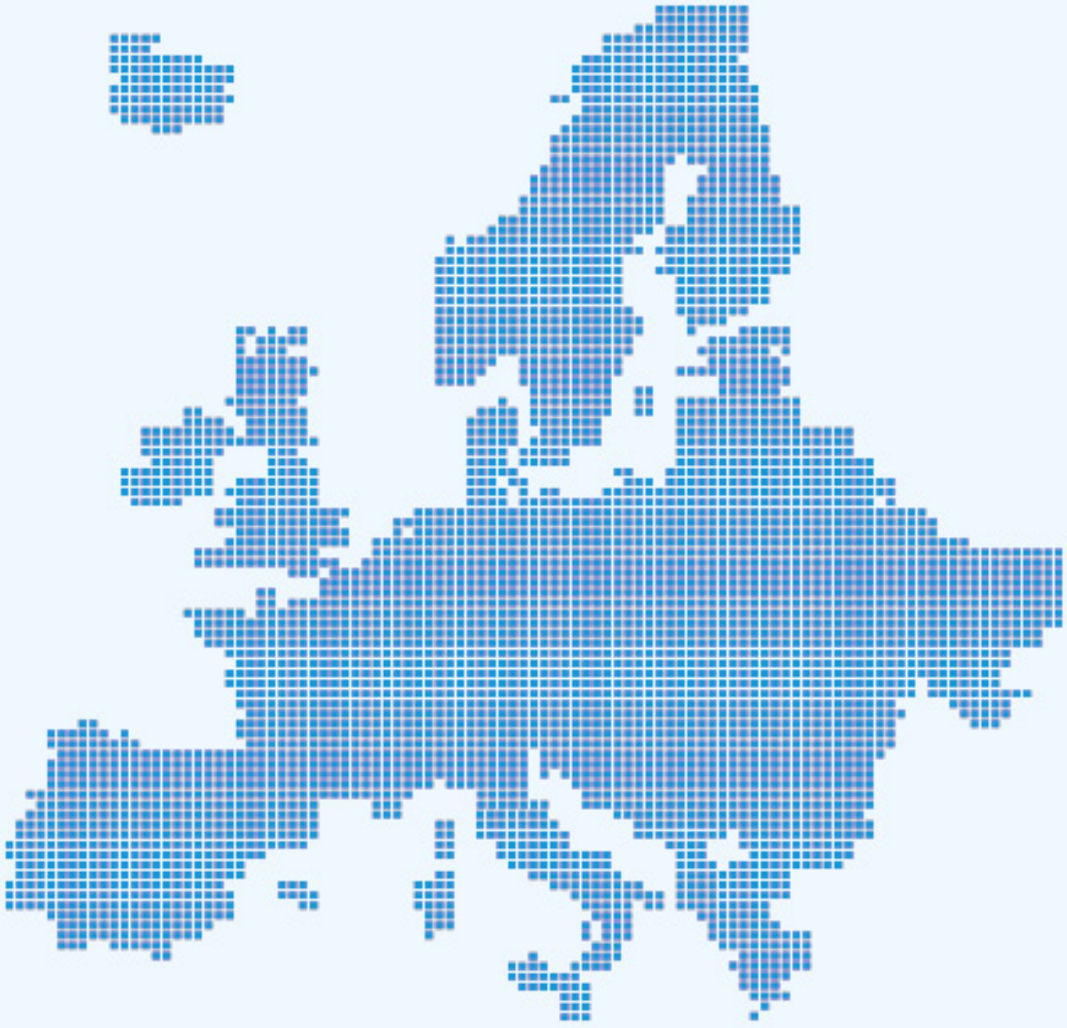
CMNI Judgements



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CMNI JUDGMENTS

COURT	LOCATION	ARTICLE CMNI	SUBSTANCE
LG Aschaffenburg **14.05.2009**	**1 HK O 137/08, 1 HKO 137/08** **ZfB 2011, Nr. 6, page 2133 ff**	**Art. 5**	**Liability of carrier for loss caused by delay or lateness**

Even where the parties to the contract are assuming a given transport time, the agreement does not stipulate a delivery time, in the sense of CMNI Art. 5 or Para. 423 of the German Commercial Code, unless a fixed handover point, to be stated at the beginning of any such delivery time, has been agreed. In transport law, as well as in CMNI Art. 5 or Art. 423 of the German Commercial Code, delays are also addressed in the liability system of the German general law of obligation in Art. 280 et seq., in particular Arts. 286, 311 et seq. and 320 et seq. of the German Civil Code. However, even under this liability system, the liability of a carrier for a loss caused by delay or lateness is dependent on a clear handover point having been contractually agreed or substantiated following a subsequent justification of the delay.

LG Stade **25.05.2009**	**8 O 129/08** **ZfB 2009, Nr. 10, page 2045 ff**	**Art. 16, para. 1, Art. 21**	**Contamination of the goods by cargo residue; contributory negligence by the shipper**

With the entry into force of the law of approval of 17 March 2007, on 23 March 2007 the CMNI entered into national legislation. Under CMNI Art. 16, para. 1, the carrier is liable where goods are contaminated through mixing with cargo residue. The provisions of CMNI Art. 21 make no reference to the contributory liability of the shipper where the damage is caused by circumstances in his area. Under German law, the significance of a contributory involvement in the damage according to Art. 425, para. 2 of the German Commercial Code, is also taken into consideration when qualified negligence in the sense of Art. 425, of the German Commercial Code can be attributed to the carrier. In assessing the loss sustained, Art. 254 of the German Civil Code can therefore be consulted as additional national legislation supplementing the CMNI.

OLG Stuttgart 01.07.2009	**openJur 2012/61731**	**Arts. 2, para 1; 34, para 2**	**Inapplicability of CMNI to damage sustained prior to international legislation entering into force**

The CMNI does not apply to this case as at the time the damage occurred on 25.03.2007, it did not constitute applicable German law. However, the German ratification law for the CMNI, of 17.03 2007, had already entered into force prior to the damage being sustained, on 23.03.2007. Nevertheless, the decisive factor for the present inapplicability is that, following the deposit on 10.07.2007 in accordance with CMNI Art. 34, para. 2, the CMNI only took effect for Germany on 01.11.2007 (according to both completion and transformation theory).
Also under CMNI Art. 2, para. 1 German ratification is deemed an essential requirement for applicability. The prerequisite for the applicability of the CMNI as a whole is that the CMNI must be incorporated into the legislation applicable to the case under consideration.

RB Rotterdam 30.09.2009	**ECLI:NL:RBROT:2009:9227**	**Arts. 3, para.2; 10, para. 2; 16, para. 1**	**The term 'delivery'**

The term delivery ("Ablieferung", "aflevering", "livraison") is not defined in the CMNI. In the light of the CNMI as a whole, and of Art. 10, para. 2 in particular, the term delivery as used in Art. 3, para. 2 or Art 16, para. 1 of the CNMI is understood to mean the moment at which the carrier gives the consignee (or any other person entitled to receive them) the opportunity to take charge of the goods on board the ship.The damage caused to the goods transported from Germany to the Netherlands by rain during unloading occurred after the ship had been prepared for unloading and is therefore not the liability of the carrier.

RB Rotterdam 11.11.2009	**ECLI:NL:RBROT:2009: 2525** **S&S 2011,6**	**Art. 2, para. 1**	**Applicability of the CMNI**

In accordance with CMNI Art. 2, para. 1, the Convention is applicable to any contract of carriage for which the port of loading or the place of taking over the goods and the port of discharge or the place of delivery are located in two different States, at least one of which is a State Party to this Convention.
Given that the contract of carriage of goods from the Netherlands (where the CMNI entered into force on 1 October 2006) to Belgium (which is not a State party to the Convention), as well as the loading and unloading of these goods, date from before 1 October 2006, the Convention is not applicable.

LG Hamburg
28.10.2010

413 HKO 71/10, 413 HK O 71/10

Art. 34, para. 2

Applicability of the CMNI

In the case of a contract of carriage concluded no later than 25 September 2006, the regulations set out in the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) do not apply, since the Federal Republic of Germany deposited the instrument of ratification with the depositary on 10 July 2007, whereby in accordance with CMNI Art. 34, para.2, the Convention did not become part of German legislation until 1 November 2007.

RB Rotterdam
01.12.2010

ECLI:NL:RBROT:1191
S&S 2012,89

Arts. 6, para. 2; 8

Duty of information shipper

During the loading of goods for transport from the Netherlands to Germany, the hull was damaged. In accordance with CMNI, Art. 6, para. 8 and Art. 8, the shipper has a duty to provide correct information relating to the weight, centre of gravity and load of the goods. The onus of proving that the stowage plan submitted by the shipper prior to loading contained incorrect information regarding the maximum load lies with the carrier. If the carrier is able to prove this, the liability of the shipper is clear. However, where it can be shown that the vessel would have been unable to carry the cargo even if it were within the maximum weight limits, the vessel is deemed unsuitable to transport the cargo and the shipper is absolved of liability.

OLG Hamburg
05.01.2011

6 U 32/08

Art. 34, para. 2

Applicability of the CMNI

In the case of damage caused on 25 March 2007, the CMNI which entered into force in Germany on 1 November 2007 did not yet apply. The fact that the law of approval entered into force earlier is not relevant.
In the case of damage sustained on the inland waterway section to Rotterdam, liability is determined according to the law hypothetically applicable to this section. In accordance with Art. 16 of the German BinSchPRG, Arts. 407 et seq. of the German Commercial Code will apply, and accordingly the CMNI once successfully incorporated in Germany.

OLG Karlsruhe **19.05.2011**	**22 U 3/10 BSch** **ZfB 9/2011, page 2143 ff**	**Arts. 16, para.1; 25, para. 2 a.**	**Liability for contaminated goods due to average** **Exclusion of liability in the event of navigational error**

Art. 16, para. 1 deals with losses which occur as a result of physical or chemical changes to the goods carried. Emergency lighterage following average invokes the exclusion of liability as a result of navigational error. The contract of carriage is not terminated early by the recovery of the goods following average.
The exclusion of liability in the event of a navigational error during international transport is effectively agreed in pre-formulated general transport conditions (Art. 25, para.2.a)

Rheinschifffahrtsobergericht Köln **10.07.2012**	**3 U 133/09 BSchRh** **ZfB 2012, Nr. 10, page 2201**	**Art. 34, para. 2**	**Applicability of the CMNI**

On the day the accident (containers lost overboard during a turning manoeuvre by a Rhine vessel) occurred, 25 March 2007, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) was not yet applicable in Germany, as in accordance with the provisions relating to the entry into force of the Convention contained in CMNI Art. 34, para. 2, the CMNI did not enter into force in Germany until 1 November 2007, and not on the day the ratification was announced, on 23 March 2007.

Kh. Antwerp **20.12.2012**	**Not published**	**Art. 16**	**Burden of proof – liability of carrier**

On arrival in Antwerp a consignment of benzene was found to be contaminated. The victims' claim was rejected by the court as they were unable to prove that the damage to the product was caused during the river transport. The burden of proof that the product loaded complied with the specification and that the damage was caused during transport, lies with the cargo, in accordance with CMNI Art. 16, para.1.

RB Rotterdam 27.02.2013 | **ECLI:NL:RBROT:2013:8426 S&S 2014,4** | **Arts. 1; 2; 3, para. 2; 6, para. 4; 8; 29; 31** | **Liability for damage to the vessel during unloading**

The CMNI is not directly applicable to domestic transport in the Netherlands. In accordance with the declaration on the basis of Art. 31 made by the Netherlands upon accession to the CMNI, and Art. 8:889 of the Dutch Civil Code based on the said declaration, parties may agree that, as a departure from Dutch inland waterway law, the CMNI will apply to the agreement. In that case Dutch law shall apply additionally (CMNI Art. 29).
Goods are taken over or delivered on board the vessel (Art. 3, para. 2), whereby the loading is the responsibility of the shipper (Art. 6, para. 4). Delivery simply means that the carrier shall offer the consignee the opportunity to unload the goods from the vessel. The CMNI contains no provision whereby the shipper is obliged to unload; nor does the CMNI contain any provision which stipulates that the shipper is not liable for damage caused during delivery or unloading of the goods (in this case, damage caused by a grab). Arts. 6 and 7 contain no obligations on the part of the shipper with regard to delivery or unloading of goods, so that the shipper is also not liable under Art.8.
According to supplementary Dutch law, the shipper is also not obliged to unload, however, unless in a case of force majeure, he is liable for damage to the hull caused by the handling of the goods during unloading (Art. 8:913 of the Dutch Civil Code).

Kh. Antwerpen 27.01.2013 | **Not published** | **Art. 14** | **Change to contract of carriage**

In accordance with CMNI Art. 14, the shipper can alter the contract of carriage.

RB Rotterdam 03.07.2013 | **ECLI:NL:RBROT:2013:6177** | **Arts. 2; 3, para. 2; 8, para. 2; 29** | **Liability for damage to the vessel during unloading**

The CMNI does not answer the question which party is liable for damage to a vessel sustained when unloading the goods on board the vessel. This question should be answered on the basis of supplementary Dutch law. As the shipper was in no way involved in the unloading, he cannot be held liable. Under Dutch law, the consignee is responsible for unloading the goods from the vessel. If the vessel is damaged during this process, liability lies with the consignee, other than in a case of force majeure (Art. 8:929 para. 2, in conjunction with Art. 8:913 of the Dutch Civil Code).

Kh. Antwerpen **05.12.2013**	**Not published**	**Art. 18**	**Liability of carrier – loss caused by voyage**

The carrier is absolved of his liability if the loss or damage may be due to, for example, loading and unloading by the shipper or the consignee, or the nature of the goods which renders them subject to full or partial loss or damage, such as loss of volume or weight. As a result of engine problems, a consignment of diesel had to be transhipped from one vessel to another. Losses of 0.24 %M and 0.165% were deemed by the court to be normal, resulting from fluctuations in temperature, error margins in measurements, fuel remaining in pipes, etc. No liability on behalf of the carrier.

OLG Hamburg **05.12.2013**	**Justiz –Portal Hamburg** **6 U 194/10** **ZfB 2014, Nr. 3, page 2263 ff**	**Arts. 16, para. 1; 19; 21**	**Standard of liability and proof of exoneration on behalf of the chief carrier.** **Trade practices relating to exclusion of liability for navigational error**

Damage to the cargo resulting from a collision. Exclusion of liability for reasons of navigational error was not agreed by the parties. The shipper, who is taking action against the chief carrier under the contract, need only respond to the objections arising from the contract agreed with the chief carrier, and not to those arising out of the contractual relationship between the chief carrier and the sub-carrier. “Passing on” the limitation of liability in respect of the shipper in this way would also be considered to be failing to act in good faith, as the parties should be expected to be acquainted with the unfavourable rights of recourse at the time of agreeing a contract with the shipper.

For a possibility of exclusion in accordance with CMNI Art. 16, due diligence in line with Dutch law is sufficient. This makes it easier for the carrier to obtain proof of exoneration than would be the case under German general transport legislation.

OLG Düsseldorf **26.02.2014**	**18 U 27/12-dejure.org** **TranspR 6-2014** **ZfB 2014, Nr. 6, page 2278 f and 2285 ff**	**Arts. 11; 19; 20, para. 1**	**Maximum limit of liability for damage to cargo in a container**

Owing to data missing from a transport document relating to the packages or shipping units as packed in a container (CMNI Art. 20, para. 1, clause 2), when determining the maximum limits of liability for each package or shipping unit (CMNI Art. 20, para. 1. 1), the number of units of account used in the calculation should be 25,000 rather than only 666.67.
A transport document as understood in the CMNI refers only to the transport document prepared by the carrier who may be held liable for any loss. This carrier is not obliged to take account of information contained in other documents, as the transport document relates only to the relationship between the carrier and the shipper. Failing this, the presumptions of conformity set out in CMNI Art. 11, para. 3 with regard to aspects such as the volume and number of the goods accepted would apply at the expense of the carrier. Where no such transport document is available, the intention of the principle requires acceptance that in individual cases inequitable results may occur. Where a carrier abstains from issuing a transport document when the goods are handed over, he must be prepared to accept the consequences of any resulting problems, particularly with regard to proof of evidence.
Payment obligations relating to general average are considered loss or damage to goods as described in Art. 19, para. 2.

RB Rotterdam **27.06. 2014**	**ECLI:NL:RBROT:5252** **S&S 2014,112**	**Arts. 9; 29**	**Termination of contract of carriage**

While the CMNI determines the ability of the carrier to terminate the contract of carriage if the shipper fails to perform certain obligations (Art. 9), it contains no regulation covering the termination by the shipper in the event of damage to the vessel, as a result of which the planned voyage from the Netherlands to Germany cannot take place.
According to supplementary Dutch law, the carrier, depending on the circumstances of the case, is entitled to terminate the contract of carriage (Art. 8:935 of the Dutch Civil Code). In view of the relationships which exist within inland navigation, it is left to the carrier to judge whether the vessel should be considered so badly damaged that termination is justified.

RB Rotterdam 20.08.2014	**ECLI:NL:RBROT:2014:6975 S&S 2014, 88**	**Arts. 2; 3, paras. 3 and 5; 6, paras. 2 and 4; 8; 18, para. 1**	**Responsibility of shipper and carrier for loading the vessel**

As a result of the cargo to be transported from the Netherlands to Germany being incorrectly stowed, the vessel crumpled and sank.
The CMNI should be interpreted in conjunction with Arts. 31 and 32 of the Vienna Convention on the Law of Treaties, whereby the *Travaux Préparatoires* should also be taken into consideration.
The CMNI generally contains regulatory law, with the exception of the matter of the liability of the carrier. It follows from CMNI Arts. 3 and 6 that when taking over the goods on board the vessel, the shipper and the carrier both bear responsibility. The shipper is responsible for loading and stowing, as is customary in inland navigation. If he engages the services of a third party to perform this task, then the third party also falls under his responsibility (Art. 8, para.2). The shipper should furnish the carrier with full and accurate information about the goods. The carrier is responsible for the safety of the vessel and may issue instructions regarding the loading of the vessel.
Since the responsibilities and liabilities of the shipper are adequately covered in the CMNI, supplementary national law (in this case German law) does not come into play.
In the case of incorrect loading by the shipper, the carrier can invoke the exceptions set out in Art. 18, paras. 1. a and b.

Hof Den Haag 30.12.2014	**ECLI:GHDHA:2014:4309 (Appeal re RB Rotterdam, 03.07.2013 ECLI:NL:RBROT:2013:6177)**	**Arts. 2; 3, para. 2; 6, para.4; 8, para. 2; 10, para. 2; 16, para. 2; 29, paras. 1-3**	**Liability for damage to the vessel during unloading; an omission in the Convention?**

The legal relationship between parties (carriage from the Netherlands to France) is governed by the CMNI, with additional national law applying where a given point of contention is not regulated by the Convention.
In the absence of a choice of law by the parties, the national legislation of the State with which the contract of carriage has the closest connections will apply. In this case that is Dutch law, given that the carrier is registered in the Netherlands, and the port of loading is also in the Netherlands.
Under the terms of the CMNI the shipper is obliged to load, stow and secure the goods on board the vessel, but no mention is made of unloading. The explanatory memorandum on the Dutch legislation ratifying the CMNI assumes that the

shipper and the consignee bear responsibility for the loading and the unloading respectively. On the basis of CMNI Art. 3 para. 2, which stipulates that the taking over and delivery take place on board the vessel, it can be argued that unloading the goods falls outside the contract of carriage. In that case there exists only a tortious liability for damage sustained during unloading. Seen from this point of view, there is no omission in the Convention, which means that a solution is not necessarily to be found in recourse to the applicable national (in this case Dutch) law.

AG Mannheim
17.04.2015

30C1/14 BSch | **Art. 6, para. 4** | **Liability for damage to the vessel during unloading**

The shipper has a duty to the carrier to unload the cargo. This obligation derives from the charter agreement in conjunction with CNMI Art. 6, para. 4. The agreement concluded between the parties, referred to as the "charter agreement", is subject to the provisions of the CMNI with regard to the obligation to load and unload. As the Convention contains no special regulations relating to the loading and unloading of the vessel, notwithstanding the fact that also when accepting a (time or other) rental agreement there is clearly a need for regulation in this area, in such a case German transport law is applicable. In this case, the regulation contained in Art. 412 of the German Commercial Code would apply, were it not – as in this case – that CMNI Art. 6, para 4 is considered to override German transport law in view of the cross-border aspect of the transport. According to this provision, the defendant as a party to the contract has the duty to unload the cargo. Although there is no reference to the unloading of the cargo, the Court nevertheless agrees with the predominant view expressed in literature, that this is an editorial error (von Waldstein/Holland, German inland navigation law, 5th edition, CMNI Art. 6, side note 28). Ultimately, however, this question can remain open, as the freight law contained in Art. 412, para. 1 of the German Commercial Code that would otherwise be applied clearly specifies the defendant's obligation to unload the cargo.

Kh. Antwerp
05.05.2015

Not published | **Art. 6, para. 4** | **Loading obligation for the shipper – damage to the vessel**

CMNI Art. 6, para. 4 stipulates that the shipper has a duty to load, stow and secure the goods. The shipper bears the responsibility for damage to the vessel sustained during loading, provided this does not result from any concrete lack of supervision by the skipper during the loading operations (c.f. additional Belgian legislation: Art 8 of the law on river transport).

Antwerp
18.05.2015

IHT 2015, afl. 4, 457

Arts. 1; 29

Loading obligation for the shipper – damage to the vessel

In the CMNI, a shipper is anyone by whom or in whose name or on whose behalf a contract of carriage has been concluded with a carrier (Art. 1.4.). According to the CMNI, the consignee is the person entitled to take delivery of the goods (Art. 1. Para.5). The mere fact that a party is purchasing the transported goods F.O.B. (Free on Board) does not imply that this party is by definition the shipper or consignee under the contract of carriage, in the event that no documentation is available indicating who concluded the carriage of contract, who has been invoiced for the cargo, who has paid for the cargo, etc.
Where goods are carried across international inland waterways, the contract of carriage is governed by the provisions of the CMNI and, in addition, as set out in CMNI Art. 29, also by the national law with which the connections are the closest. It may be assumed that if the port of unloading or the place of delivery are in the same State as that in which the vessel is registered, the contract will be most closely connected with that legal system.

Kh. Antwerp
21.05.2015

Not published

Arts. 19, paras. 2 and 5; 22; 25

Limitation of liability (sub-) carrier

Under the terms of the Convention, the payment of consequential damage (costs resulting from the refusal of the consignee to accept the goods) is not eligible for reimbursement.
The cost of the cargo is still owed, c.f. CMNI Art. 19, para. 5. The parties interested in the goods are also responsible for cleaning the vessel, so where this has been carried out by the carrier, the carrier must be recompensed.

RB Rotterdam
10.06.2015

ECLI:NL:RBROT:2015:4078

Arts. 6, para. 4; 29

Consignee – duty to unload

Under the terms of CMNI Art. 6, para. 4, the shipper is responsible for loading. Although the CMNI does not stipulate who is responsible for unloading, in this case the duty also lies with the parties interested in the cargo. According to supplementary Dutch law, that duty lies with the consignee (Dutch Civil Code Art. 8:929, para. 2).

Hof Den Bosch 04.08.2015	**ECLI:NL:GHSHE:2015:2992**	**Art. 29**	**Distribution of the burden of proof**

The CMNI contains no provisions relating to the distribution of the burden of proof; this is subject to the applicable supplementary national legislation.
The CMNI Convention contains uniform law and is to be interpreted on the basis of Arts. 31 and 32 of the Vienna Convention on the Law of Treaties.

Hof Den Haag 23.02.2016	**Continuation of interim judgement 30.12.2014**	**Arts. 2; 3, para. 2; 6, para.4; 8, para. 2; 10, para. 2; 16, para. 2; 29, paras. 1-3**	**Liability for damage to the vessel during unloading; an omission in the Convention?**

Under neither the CMNI nor supplementary Dutch law is the shipper *at any time* considered liable for damage caused to the vessel during unloading. There is no prevailing view in case law or literature for the view that the liability of the shipper for such damage is implicit in the CMNI. In agreement with the CMNI, the Dutch Act of Approval also stipulates the consignee with regard to the acceptance and unloading of the cargo. The shipper is not jointly liable with the consignee for damage sustained during unloading. Under Dutch legislation, the shipper's liability is not strict liability but fault-based liability, whereby the possibility of force majeure remains.