Comparison of the Multimodal Transport Operator’s and a Freight Forwarder’s Liability Limit in International Transport. Case Study

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Abstract: Understanding the limits of freight forwarders’ liability helps to predict the scope of indemnification to the customer in case of damage or loss of cargo. The absence of international agreements regulating the limit of the liability limit of freight forwarders makes it difficult for customers to find freight forwarders with the most favorable conditions. A large number of factors, such as the type of forwarding contract, the country of registration of the forwarder, the status of the forwarder, existing international agreements, etc. can significantly affect the degree of liability of the forwarder. In this paper, the legislation regulating forwarding and the activities of the multimodal transport operator will be considered. In addition, the standard conditions of the forwarding contract, the most commonly used in the selected countries, will be analyzed. On the basis of the conducted research, a case study will be presented, which will indicate the practical influence of various factors on the liability limit of the forwarder and the multimodal transport operator.

Keywords: Freight forwarder liability, transport legislation, multimodal transport

1. Introduction

Market globalization, rising energy prices, and other factors are increasingly forcing manufacturers to turn to intermediaries who can organize, speed up and reduce the cost of the transportation of goods. An important task for companies is to perform their direct functions, such as production and provision of services. At the same time, it is necessary to exclude uncharacteristic activities, such as the organization of transportation, warehousing, and so on. In the process of cargo transportation, the Freight Forwarder (hereinafter — FF) acts as an intermediary for the latter.
Traditionally, the FF takes up the role of an agent who organizes the transportation process, and also assists in organizing operations related to the transportation process [1]. Often the FF takes over the functions of customs clearance, preparation of documents, booking of ship or plane tickets, insurance process, letters of credit, and others [2]. However, recently, under the pressure of market demands and the development of competition, FF is expanding the scope of his services, gradually moving away from the traditional role of an agent [3].

The modern amplua of the FF is increasingly reduced to the role of the principal. This is due to the fact that FF strive to expand their functions and deepen into logistics and transport processes. The driving force behind these changes are factors such as containerization, the information technology revolution of the 1970s, growth of logistics, and increased demand for the transfer of all transportation processes to FFs from shippers [4].

In this regard, multimodal transportation is becoming widespread. The process is carried out and coordinated by one operator – the Multimodal Transportation Operator (hereinafter — MTO). The carriage of goods in international multimodal transport is carried out by at least two different modes of transport or at least two different transport branches. Moreover, the entire process of international multimodal transport is covered by a single contract signed between the MTO and the consigner [5].

An important component of the forwarding contract is the definition of the FF's liability limitation to the client. Limit of liability gives FFs the opportunity to predict the amount of indemnification to the customer for loss, damage or delay in cargo delivery.

The expansion of the geography of transportation and digital communication allows customers to use the services of FFs from different countries, which often helps to reduce logistics costs. However, in order to protect their interests, clients are forced to thoroughly study the legislation and the general conditions of forwarding applied in different countries. This problem significantly affects the speed of information exchange between the parties and often causes misunderstandings between FFs and customers. Taking into account the increasing demand for forwarding services, the importance of unifying forwarding conditions increases.

The aim of the article is to research the sources of regulation of the activities of MTO and FFs in selected countries. As part of the study, the extent of the limit and the area of liability of FFs and MTO will be compared, and a case study will also be presented, which allows to clearly see the difference in limit of liability for a given example of shipping. The reason for analyzing this matter is the need to discuss the opportunity of unifying the standards and legislative basis of forwarding.
2. Literature Review

The literature review examines the works of authors who define the functions, the area of liability and the limit of liability of "classical" FFs and the MTO. The result of the review showed, that the problem is insufficiently covered.

In study [1], the question of identifying the difference between the FF and other logistics service providers is raised. Referring to information from the International Federation of Freight Forwarders (hereinafter — FIATA), the authors define the functions of the FF: “The diversity of their activities is high, from customs brokerage, over arranging all transport operations by rail, road, sea or air, including multimodal transport, to performing all logistics operations to provide "door-to-door" delivery”. Based on this, it can be concluded that the organization of multimodal transportation is only one of the functions of the FF, which does not radically change its role.

Study [6] shows the main difference between the MTO and the "classic" FF - unlike FF, MTO uses the Negotiable FIATA Multimodal Transport Bill of Lading (hereinafter — FBL), created by the FIATA. By issuing this bill of lading, the FF becoming a contractual carrier, regardless of whether he carries out the transportation independently or with the help of third parties. This means that by accepting the role of MTO, the FF changes his status in relation to the client.

Paper [7] considers the liability of FFs in accordance with national and international law. The paper indicates that the German, Italian, and French legal systems provide for the possibility of using the role of a FF to act as an agent in relation to a third party, but the role of a FF acting as a principal in relation to a third party is becoming increasingly popular. The role of the principal presupposes the emergence of the FF's liability to the customer for the actions of third parties hired by the FF during the organization of the cargo transportation process. The author has made the assumption that the unification of legislation in the field of forwarding is still relevant as long as there is a role of the FF as an agent.

A review of the FF's liability limit in selected states of the EU was carried out in study [8]. The limits of liability established by national associations of FFs were considered in the work. The result of the analysis is the presentation of a wide range of limits of liability, showing the lack of unification in this matter.

Study [9] describes the MTO liability system as a combination of two systems, one of which assumes liability in accordance with the legal norms applicable to the part of the transport route where the damage occurred, whether by rail, road, or sea, and the other subordinates the entire multimodal transport contract to the same liability rules, regardless of the types of transport actually used for transportation, and the part where the damage occurred.

In research article [10], an attempt to unify the legislation regulating international forwarding was considered. In 1967, taking into account the difficulties of distinguishing between a FF as an
agent and a FF as a principal, the International Institute for the Unification of Private Law (hereinafter — UNIDROIT) presented a draft international convention in an attempt to combine different conceptual approaches in forwarding. Considering that the project did not receive support, the problem of the absence of standard forwarding conditions has not disappeared.

The next attempt to unify forwarding activities was carried out in 1980. In order to regulate multimodal transportation, the Convention on International Multimodal Transport of Goods was created. This convention has not been ratified by the required number of states, therefore the legal norms concerning multimodal activities still depend on various legal norms of the countries in which certain types of multimodal activities are carried out [11].

3. Data and Methods

The comparison method will be used in the research. The essence of the method is to compare individual social phenomena and processes in order to detect their similarities and differences. To conduct a comparative analysis, it is necessary to ensure the fulfillment of such factors as the establishment of the purpose of the analysis, the definition of comparison segments, the processing of comparison results, and the analysis of the possibility of their application in practice.

An important condition for the possibility of conducting a comparative analysis is to determine whether there is a certain objective commonality between the objects being compared [12]. Considering that the activities of the FF and the MTO share a common main idea – the organization of the transportation process – it can be argued that the main criterion for the possibility of conducting a comparative analysis is fulfilled.

In carrying out this work, two countries were selected – the Slovak Republic and the Federal Republic of Germany. The tools for determining and comparing the liability limit in the selected states are presented in Table 1.

<table>
<thead>
<tr>
<th>Method</th>
<th>Description</th>
<th>Knowledge sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documentary and legislation analysis</td>
<td>This analysis will provide information about the type of activity of the MTO and the FF, and sources of regulation of the activities of MTO and FFs in the selected countries. Also, with the help of the analysis, the source of establishing the liability limit of the FF and the MTO will be determined</td>
<td>• Legislative acts regulating transport activities</td>
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<tr>
<td></td>
<td></td>
<td>• FIATA, BIMCO, documents, general forwarding conditions provided by national associations of logisticians and FF</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Other available sources</td>
</tr>
<tr>
<td>Comparative analysis</td>
<td>This type of analysis will allow comparison between such limits of liability of the MTO and the FF in the selected countries.</td>
<td>• Data obtained by documentation and legislation analysis</td>
</tr>
<tr>
<td>Case study</td>
<td>This method will allow simulating the liability limit of the FF and the MTO when organizing transportation with the same input data</td>
<td>• Data obtained by documentation and legislation analysis</td>
</tr>
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</table>
3.1 Multimodal Transport Operator

UNCTAD/ICC Rules on Multimodal Transport Documents were created on the basis of the non-certified Convention on International Multimodal Transport of Goods. The rules were created to regulate multimodal transport, but are not mandatory, being applied only when there is a direct reference to them. [13]. Based on these rules, various documents and conditions have been developed that are used by FFs in multimodal transportation. Recently, the most widespread has become FBL, whose initiator was FIATA. In addition to FBL, there is also the Non-negotiable FIATA Multimodal Transport Waybill (hereinafter — FWB) [14].

The non-governmental organization Baltic and International Maritime Council (hereinafter — BIMCO), dealing with maritime transport policy, unification of shipping documents and informing members about various aspects of international maritime trade, has created its own multimodal shipping documents based on UNCTAD / ICC rules and standard negotiable waybill conditions for freight transport in combined transport - Negotiable Multimodal Transport Bill of Lading (hereinafter — MULTIDOC 2016) and Non-negotiable Multimodal Transport Bill of Lading (hereinafter — MULTIWAYBILL 2016) [15]. The FBL/FWB and MULTIDOC 2016/MULTIWAYBILL 2016 conditions are almost identical. The MTO, accepting the conditions, acts as an MTO bearing responsibility to the client for all stages of transportation. According to the conditions, in case of detection of the area where the damage or loss of cargo occurred, the liability limit is calculated in accordance with the convention governing the type of transport in which the incident occurred.

3.2 Germany Freight Forwarder

In Germany, forwarding activities are regulated by the Fifth Chapter of the German Commercial Code which defines such provisions as the forwarding contract, and the rights and obligations of the FF.

The Association of FF and logistics of the Federal Republic of Germany suggests the use of the Standard Terms and conditions of the German FFs, 2017 (hereinafter — ADSp 2017), created in accordance with the German Commercial Code’s conditions for carrying out forwarding activities. The limit and the area of liability of the FF vary depending on the accepted role. Under the terms of use of ADSp 2017, the FF has the right to act as an agent or as a principal[16].

3.3 Slovak Freight Forwarder

In Slovakia, forwarding is regulated by the Commercial Code and the Trade Licensing Act which define the conditions for entrepreneurs’ access to the forwarding market and the forwarding contract.
The Association of Logistics and Freight Forwarding of the Slovak Republic (hereinafter — ALFF SR) advises its members to use the General FF’s conditions of ALFF SR (hereinafter — GFFC ALFF SR). Their purpose is to regulate in more detail and supplement provisions of § 601 – 609 of the Commercial Code on the contract of freight forwarding.

In accordance with the legislation and the GFFC ALFF SR, the FF acts as a principal, bearing liability for the actions of third parties to the client. The FF can also assume the status of a carrier under the contract, carrying out cargo transportation independently or with the involvement of third parties [17].

Most often, the FF's liability limit is established in units SDR/XDR (Special Drawing Rights), that were created by the International Monetary Fund as a reserve currency. The SDR value in US dollars is determined daily based on the spot exchange rates of the currencies included in the basket. [18].

A comparison of the liability limit of MTO and FFs in the selected countries is presented in Table 2.

**Table 1** Processed by authors on the basis of sources. Source: [15,17-19].

<table>
<thead>
<tr>
<th>Liability by GFFC ALFF SR</th>
<th>Liability by ADSp 2017</th>
<th>Liability by FBL</th>
<th>Liability by MULTIDOC 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>In case of damage to the consignment during transport by means of transport or handling related to transport, the amount of damage cannot exceed:</td>
<td>8.33 SDR / kg gross cargo weight, except in cases of damage during the carriage of goods by sea.</td>
<td>8.33 SDR / kg gross weight of cargo with equipment in case, if the multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways</td>
<td>8.33 SDR / kg gross weight of cargo with equipment in case, if the multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways</td>
</tr>
<tr>
<td>8.33 XDR / kg gross weight of damaged, destroyed or lost goods</td>
<td>2 SDR / kg gross weight of the cargo, in the case of a forwarding contract involving different modes of transport, including maritime transport, and if the place of damage to the cargo has not been established.</td>
<td>2 SDR / kg gross cargo weight for forwarding contracts relating to the carriage of goods by sea or transport by various means of transport, but including the carriage of goods by sea</td>
<td>Max. 666.67 SDR per package or unit or 2 SDR / kg gross weight of treasure, whichever is greater.</td>
</tr>
<tr>
<td>Max. 20,000 XDR</td>
<td>Max. 1.25 million € for each case of damage or 2 SDR / kg Gross cargo weight, whichever is higher.</td>
<td>Max. 666.67 SDR per package or unit or 2 SDR / kg gross weight of treasure, whichever is greater.</td>
<td>Max. 666.67 SDR per package or unit or 2 SDR / kg gross weight of treasure, whichever is greater.</td>
</tr>
<tr>
<td>Max. 2.5 million if there are multiple claims for a single claim</td>
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</table>
During storage, the FF’s liability for lost, damaged or destroyed goods cannot exceed:

- 3.925 XDR / kg gross weight of damaged, destroyed or lost goods
- Max. 3,925 XDR per claim
- 19,625 XDR if the damage caused to the customer consists of the difference between the required and the actual state of the stored stocks

In case of damage caused by a delay in the delivery of the shipment, the FF’s liability cannot exceed:

- Limited to an amount not exceeding the shipping fee

The calculation of the liability limit was carried out according to the formula:

\[
\text{Liability limit/kg} \times \frac{\text{SDR/XDR rate to Euro}}{1.30} \times \text{weight of damaged/lost cargo}
\]

4. Case Study

The purpose of the case study is to indicate the difference between the liability limit of FFs and MTOs registered in different countries. To compare the liability of the FF and the MTO, the transportation of goods will be modeled on the same routes, but with different areas where the goods were damaged. The liability limit was compared for FFs and MTOs from different states. The route will include rail and sea transportation. The cargo is being transported in a container, and the weight of the goods is 20,000 kg. We accept the container as a unit of goods. The value of the cargo is 400,000 EUR. The value of the transported shipment is not entered in the contract. 1 SDR / XDR = 1.30 EUR. The SDR / XDR value given is from 15.09.2022 [20].

The calculation of the liability limit was carried out according to the formula:

\[
\text{Liability limit/kg} \times \frac{\text{SDR/XDR rate to Euro}}{1.30} \times \text{weight of damaged/lost cargo}
\]

If the amount received exceeds the maximum stipulated compensation limit set for the loss or damage of one unit of cargo or one case of damage, the maximum amount of compensation must be applied.

If the forwarding conditions provide for the calculation of the liability limit depending on the type of transport on which the damage/loss of the cargo occurred, it is necessary to refer to the relevant conventions.
For example, in the field of maritime transport, Hague Rules establish a limit in the carrier's liability of 100 GBP per package, Hague-Visby Rules set the limit at 2 SDR / kg or 666.67 per package and Hamburg Rules limit the degree of liability to an amount not exceeding the equivalent of 2.5 SDR / kg or 835 SDR per package [21]. The CMR Convention, regulating road transport in more than 150 countries, stipulates that the liability limit of the road carrier cannot exceed 8.33 SDR / kg [22]. Under Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM - Appendix B to the Convention COTIF), compensation should not exceed 17 units of account per kilogram of lost gross weight of cargo [23]. The Montreal protocol, regulating air transportation, sets the limit of liability at 19 SDR / kg [24]. And finally The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) specifies that the carrier is not liable for amounts exceeding 666.67 units of account per package or other shipping unit, or 2 units of account per kilogram of weight, specified in the transport document, of the goods lost or damaged, whichever is the higher. If the parcel or other transport unit is a container and no package or transport unit consolidated in the container is indicated in the transport document, the amount of 666.67 units of account shall be replaced by the amount of 1,500 units of account for the container without the goods contained therein and, in addition, by the amount of 25,000 units of account for the goods in the container [25].

The results of the comparison of liabilities in the case study are shown in Table 3.

<table>
<thead>
<tr>
<th>Table 3. Comparison of the liabilities of FFs and MTOs in selected states. Rail and sea transport. Source: authors based on the case study.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liability of the Slovak FF</td>
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<td>-----------------------------</td>
</tr>
<tr>
<td>The cargo is completely damaged, without detecting the area where the damage occurred:</td>
</tr>
<tr>
<td>The cargo is completely damaged. Damage occurred during the carriage of cargo by rail (a separate transport contract was concluded for this section of transport).</td>
</tr>
<tr>
<td>The cargo is completely damaged. Damage occurred during the carriage of cargo by sea (a separate transport contract was concluded for this section of transport).</td>
</tr>
</tbody>
</table>
5. Conclusion
The contribution of this work is a review of the literature related to this issue. In addition, a review of the legislation regulating the field of forwarding in selected countries was conducted, and the difference between the status of the FF and the MTO in relation to the client and the third party was formulated. Using the example of the case study, the difference between the liability limit of the FF and the MTO carrying out transportation under the same conditions was clearly demonstrated.

The conducted research has shown that the FF’s liability limit can be influenced by such factors as:

- the status of the FF and the type of standard conditions mentioned in the forwarding contract;
- the country of registration of the FF;
- the presence or absence of an indication of the value of the goods in the expedition contract;
- detection of the area where the cargo was damaged, or its absence;
- the type of international treaties and conventions regulating cargo transportation, ratified in the states under consideration, etc.

The main purpose of using forwarding services is to facilitate the process of cargo transportation for customers, taking into account the fact that some of them are ignorant of logistics and forwarding. Then, taking into account the above factors, the problem of the lack of unification of forwarding conditions and liability limits becomes obvious. In order to find a more profitable solution, a client who needs to ensure the international transportation of his cargo is faced with the need to carefully study the conditions of FFs from different countries, which may differ significantly from each other. It can be seen that there was an attempt to legislatively unify the conditions for FFs and MTOs, which, however, was unsuccessful. Of course, this shows the complexity of the issue, but the urgency of the problem requires repeated attempts to create unified international legislation in the field of forwarding.

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