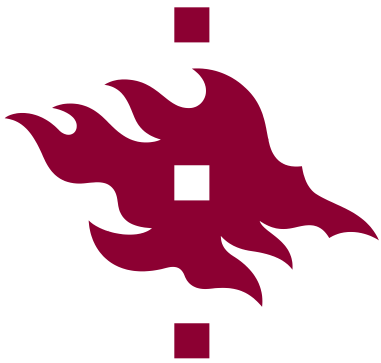




Multimodal waybill: Is a predictable EU liability system an achievable alternative to international conventions?

Senior Researcher Dr. Ellen Eftestøl-Wilhelmsson,
University of Helsinki / University of Oslo

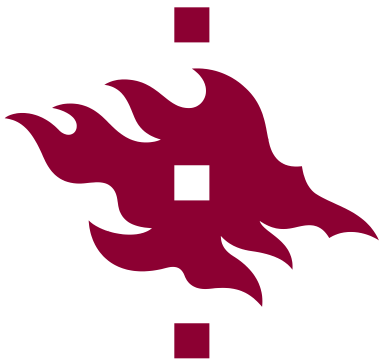


The vision: A single European Transport Area

Tools: Removal of regulatory, administrative and technical barriers

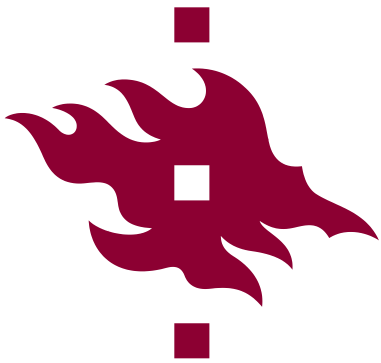
Legal barriers

- Multiple transport documents
- Different liability regimes
- No multimodal liability regime



The problem of liability level

- Indexed liability level: 1 SDR = 1.10 EURO
- Sea: 2 SDR/kg or 666.67 SDR/unit
- Road: 8.33 SDR/kg
- Rail: 17 SDR/kg
- Air: 19 SDR/kg
- Problem: what liability level applies in a multimodal context?

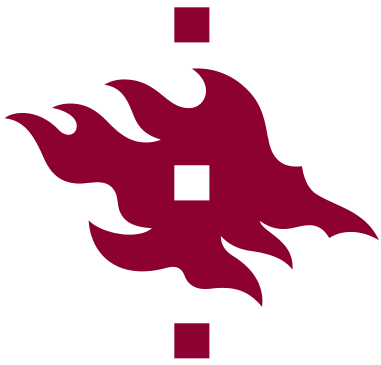


The questions to be addressed

The European and international discussion on regulatory attempts:

- EU 2005 A draft set of (opt out) uniform liability rules
 No consensus
- EU 2007 The freight logistics action plan
 Could a network based liability system work?
- UN 2009 The Rotterdam Rules
 The modified network solution

Is a predictable EU liability system an achievable alternative?



The present international situation – unpredictable and unclear

English Court of Appeal – pragmatic

- Quantum Corporation Inc v. Plane Trucking
- Singapore – Paris –Dublin (air and road)
- Cargo stolen during the road leg.

Is CMR applicable?

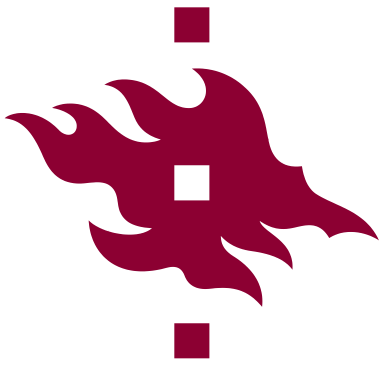
Yes – a contract of road carriage exist when the cargo is taken over by a road carrier

German Supreme Court (Bundesgerichtshof) – formal

- BGH 17 July 2008
- Tokyo – Rotterdam – Münchengladbach (sea and road)
- Cargo damaged during road leg.

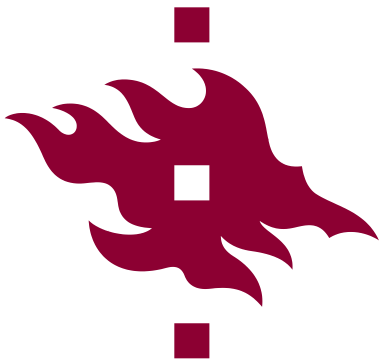
Is CMR applicable?

No – CMR does not apply to multimodal contracts - a matter of principal



The EU attempt on a uniform liability system

- **The vision:** “A set of uniform multimodal liability rules which concentrate the risk on one party and provide for strict liability for all types of losses irrespective of the modal stage where a loss occurs and of the cause of such loss”
- **The 2005 proposal**
 - Uniform liability rules
 - Strict liability
 - Limited to 17 SDR/kg – highest at the time
 - Opt out
 - Step back intention



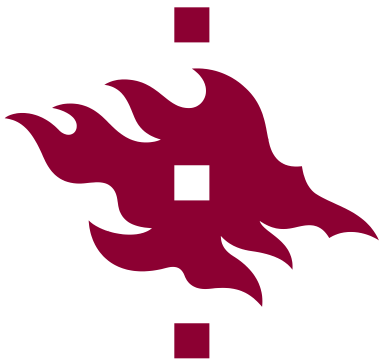
The 2007 European Freight Action Plan

Two alternatives should be addressed:

- 1) A European standard liability clause for all transport operations (uniform liability)
- 2) A European liability rule to fill in gaps between existing liability regimes (network liability)

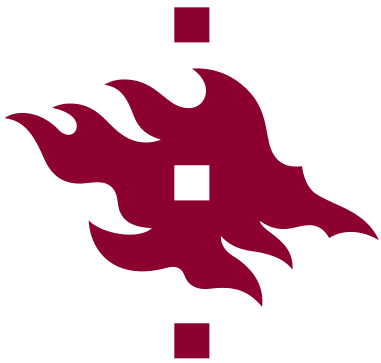
The 2011 White paper: "Any comprehensive multimodal proposal of the Commission will have to take the global convention [the Rotterdam Rules] into account."

SEC(2011) 391 at 189



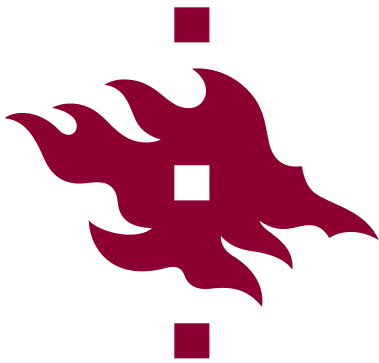
The Rotterdam Rules

- Governing international multimodal transport **with a sea leg**
- Broad scope – almost all contractual issues
- Carrier liability, chapter 5
- Mandatory provisions
- Neglect with reversed burden of proof
- Liability limited to 3 SDR/kg or 875/unit
- Modified network system in art 26



The modified network liability system

- Art. 26 makes provisions of **other instruments** applicable in certain cases:
 - Liability
 - Limitation of liability
 - Time for suit
- Only where loss etc. occurs **solely on a non-maritime leg.**
- Only where another mandatory international instrument would be applicable for the leg where the loss etc. occurred.



Is a predictable EU liability system an achievable alternative to international conventions?

- EU 2005 ambition and proposal – predictable
- EU 2007/2011 ambition + UN Rotterdam Rules - unpredictable, but achievable:
 - A small step forward
 - Solving the problem of undisclosed damages
 - If the Rotterdam Rules becomes an international success, they are hard to navigate around
 - A double international system not recommended
- If not – go for the 2005 proposal