

TRANSPORTS

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Government Ordinance no. 19/1997 on transports, published in the Official Gazette no. 552/11th of November 1999
- Order no. 1842/2001 of the minister of public works, transport and housing for the approval of the Methodological Norms for the authorization and performing of the road transports and their related activities, published in the Official Gazette no. 58/28th of January 2002
- Order no. 1843/2001, of the minister of public works, transport and housing for the approval of the Norms regarding the conditions of use of the temporary held vehicles for the purpose of the performing of road transport operations, published in the Official Gazette no. 105/7th of February 2002
- Government Ordinance no. 49/1999 on railway transport of dangerous goods published in the Official Gazette no. 401/27th of September 1999 approved by the Law no. 788/2001, published in the Official Gazette no. 21/16th of January 2002
- Government Ordinance no. 88/1999 on establishing certain rules for the combined transport of goods, published in the Official Gazette no. 423/31st of August 1999 approved by the Law no. 401/2002, published in the Official Gazette no. 455/2002
- Government Ordinance no. 44/1997 on road transports, published in the Official Gazette no. 222/29th of August 1997 approved by the Law no. 105/2000, published in the Official Gazette no. 299/30th of June 2000

- Government Ordinance no. 41/1997 on approval of the Romanian railway transport Regulations, published in the Official Gazette no. 220/29th of August 1997

I. Transport operators

Transport operators are Romanian or foreign conveyors having equal and non-discriminatory access to the infrastructure opened to public access. ***Conveyors*** means natural or legal persons authorized to perform internal or international transports, of goods or persons, for public interest or personal interest, with the means of transport held in property or leased.

Operators of the activities related to the transports are natural persons or legal persons performing the activities performed in connection with / or during the transport.

II. Authorities having duties in the field of transports

The authorities having duties in the field of transports are: Ministry of Transport, Constructions and Tourism, Romanian Road Authority, Romanian Naval Authority, Romanian Railway Authority, Romanian Civil Aeronautic Authority, Regies Autonomes “Romanian Auto Registry”.

III. Modes of transport

The following modes of transport are part and parcel of the national transport system:

- a) road transport;
- b) railway transport;
- c) naval transport;
- d) air transport;
- e) multi-modal and combined transport

Each mode of transport has in its structure the transport infrastructure, means of transport, transport operators and of the activities related to them.

1. Road transport

Internal and/or international road transport is performed by the Romanian or foreign road transport operators, who own and use motor

vehicles matriculated in Romania, driven by persons having Romanian citizenship or by foreign citizens having right of work in Romania.

1.1 Public road transport

Public road transport is made on the basis of a contract, against payment, by the road transport operators, owners of licenses, having as object of activity road transport and owning in property or lease road vehicles, regardless their transport capacity.

Road transport operators registered in the Road Transport Operators Registry held by the competent authority, may perform public road transport activities. The road transport operators, owners of the transport license register in the road transport operators registry.

According to the Government Ordinance no. 44/1997, the **transport license**, is granted to the public road transport operators fulfilling the conditions of honorability, professional competence and financial capacity.

Transport license is issued by the competent authority for a period of 5 years and is endorsed yearly.

1.2 Road transport for personal interest

Road transport for personal interest is made without levying a tariff or an equivalent in kind or in services of this one.

Road transport for personal interest is performed mainly under the following conditions:

- Uses vehicles held in property or leased, driven by employees or by certain members associated to the transport operator;
- It is an accessory or auxiliary activity to the other activities of the transport operator;
- Goods or commodities the transport operator's property have been sold, bought or leased, or have been manufactured, excerpted or fixed by him, the purpose being only that to transfer them, the transport being to or from the transport operator, for the satisfaction of his own necessities;
- The transported persons are the transport operators' employees or his family members, the purpose of the transport being the movement for family, social or charity purposes.

The road transport license for personal interest is issued to the road transport operators performing transport of goods or persons in personal interest, with auto vehicles held in property or with any other title, having the total authorized weight over 3.5 tones or capacity of over 9 places on

chairs, including that of the driver, in international traffic or road transport of dangerous goods or non-gauged in national traffic.

1.3 Execution license

After the obtaining of the public road transport license, of the road transport license for personal interest or of the authorization for road transport for personal interest, valid for the park under their administration, the road transport operators have to obtain the ***execution license***, according to the category and type of road transport, in order to be able to perform road transports.

Execution license is issued by the territorial agencies of the Romanian Road Authority – R.R.A. The execution license is granted on a period of maximum one year. Issuance of the execution license for the vehicle is conditioned by the existence and functioning of the speed-limiting device.

Execution license may be suspended or cancelled if the conditions imposed on its issuance are not complied with.

Execution license for activities related to the road transport

The obtaining of the execution license is also compulsory for activities related to the road transport, like:

- a) the bus terminal and the activities within it;
- b) activity of travel agency. The authorized travel agencies, subject to condition in which the sale of the travel tickets for transport of persons through regular services is mentioned in the authorization documents are excepted from the compulsoriness of owning the execution license for the activity of travel agency;
- c) activity of collecting, forwarding and distribution of goods;
- d) activity of delivery;
- e) activity of mediation in road transports for goods or persons.

The issuance of the execution license is in the charge of the territorial agency of the Romanian Road Authority – R.R.A. in the jurisdiction where the operator for activities related to road transport has its headquarters. This license is issued for a period of 5 years and is valid only subject to condition of annual endorsement by the issuer, with the payment of the due tariffs.

IV. Transport contract

Transport contract is regulated by the provisions of Art. 413 – 441 Commercial Code, which forms the legal framework and Art. 1470, point 2 and Art. 1473 – 1477 Civil Code. Besides these provisions there is a series

of regulations specific to each modality of transports, like those regarding the marine transport, provided by Art. 490- 694 Commercial Code, at the air transport, provided by the Air Code (mostly abrogated through the Government Emergency Ordinance no. 29/1997), the railway transport, provided by the Railway Transport Regulations, etc.

Transport contract is the convention on the basis of which the conveyor (**carrier**) undertakes to transport within a term and in exchange of a price a quantity of goods or a person / group of persons (**beneficiary of transport / consigner**) from a point of departure to a place of destination.

Form of the transport contract

The transport contract is usually concluded through a writing whose content and name differs from one category of transport to another:

- way-bill (for railway transport),
- bill of lading (in marine transport)
- traveling ticket or traveling card in passengers transport.

Only one document proving the transport contract is executed for each expedition.

Specifications

- In order to conclude a transport contract one of the parties has to be an authorized transport company;
- Usually, the transport contract has an onerous nature.

1. Contract for transport of goods

The contract for transport of goods is that contract through which the carrier, named **conveyor (carrier)** undertakes to the **consigner** to transport from one place to another certain quantities of goods, with a means of transportation in the exchange of a price (transport fee or tariff), which to deliver to the consigner or to the recipient indicated by the consigner.

The contract for transport may be concluded directly with the conveyor or with the specialized agents authorized by the Ministry of Transports, Constructions and Tourism.

The identification of the object of the contract is compulsory, through the description of the cargo delivered by the consigner to the conveyor.

Certain goods forbidden by law cannot be transported by certain means of transportation, for example – on railways:

- explosive, inflammable, radioactive or infectious goods;
- infected cereals and non-burnt bricks;

- goods whose transport is forbidden through legal provisions or for reasons of public order, etc.

Other goods are accepted in the transport, but subject to certain conditions: munitions may be transported but only defused; straws only mechanically packed.

Execution of the contract

Execution of the contract means the compliance by the parties with the undertaken contractual liabilities. The execution comprises more stages:

- a. ***Delivery of the goods*** – The consigner has to deliver the goods to the conveyer at the place, term and in the quantity stipulated in the documents, complying at the same time with the usual packing conditions. If valuable things are transported, the consigner has to declare them, as the conveyer is only liable within the limit of the declared value.
- b. ***Loading of the goods in means of transportation-*** if not otherwise agreed, the consigner will have to load the goods. Personal seals shall be applied and measures of prevention against thefts shall be taken.
- c. ***Transport of the goods*** – in case of delay or prevention in the performing of the transport, the conveyer has the obligation of notifying the consigner, who can cancel the contract. The consigner, before the beginning of the transport, has the right to give a counter-order through which he renounces the transport, right which ceases in the moment in which the goods reach their destination or the transport document has been delivered to the recipient.
- d. ***Delivery of the goods to the recipient*** – the conveyer notifies the recipient about the arrival of the goods and about the putting at the disposal of the expeditions for unloading (in railway and marine transport), by the delivery at domicile (in the road transport) and handing over to the recipient a counterpart of the transport document, releasing the goods against a reception signature.
- e. ***Payment of the price of the transport*** – the releasing of goods is conditioned by the payment of the price. Payment can be made by the consigner, when the goods are delivered, or by the recipient, upon its arrival. The cost of the movement of the goods may be borne partly or totally in the recipient's charge, if his consent exists.

Parties' liability

In all the cases of transport – auto, railway, naval, air, marine, the conveyer's obligations are approximately the same; consequently, the

liability guides itself after similar rules. The parties may limit liability but cannot stipulate that they are not going to be responsible for deception or serious offence.

In the case of the railway transport performed by more conveyors (carriers), on the basis of a sole way-bill, the liability is borne to the first conveyor who has action in recovery against the next conveyor, existing between the conveyors a joint liability besides the consigner.

Characteristics of the conveyor's liability

The conveyor's liability is limited to the period of time of the transport (movement) of the thing (Art. 425 Commercial Code). But, the conveyor shall be liable before the conclusion of the transport contract, if he unreasonably refuses to contract.

In case of delay, the conveyor's liability varies according to the period of time of the delay:

- a) in delays shorter than the double of the agreed period, the conveyor loses a part from the price of the transport, in ratio with the duration of the delay;
- b) in delays equal to the double of the agreed period, "the conveyor loses the entire price of the transport";
- c) if the amount representing the price of the transport does not cover integrally the damages of the recipient, he may request for the difference for the higher damages, the conveyor's responsibility, if it would be agreed that they came from this cause, without exceeding the total value of the damage owed by the carrier for the total loss of goods.

In case of the railway transport, in case of delay, the conveyor is obliged to pay for each day of delay a percentage of 2% from the tariff of transport.

The conveyor's liability ceases at the delivery of the goods to the recipient, except the situation in which the beneficiary of the transport has not objectively had the possibility of taking knowledge, upon the releasing of the goods, of the damaging, substitution, dilution or alteration of the goods, from the carrier's fault, during the transport.

Conveyor is exonerated from liability under certain circumstances:

- cases of force majeure and fortuitous case;
- if the damage is due to the defect or nature of the thing;
- the deed of the consigner or of the recipient, if the loss, diminution or damage have produced by their fault.

