

**New provision in Spanish legislation,  
allowing an actual road carrier to claim transport charges directly from the sender**

Since August 2013, due to a legal amendment in Spain to the national Law on Land Transport, nr. 16/1987 dated 30 July 1987, the actual carrier is entitled to make a claim for the payment of transport charges directly to the sender of the goods. Therefore this new provision – in Spanish called “acción directa” (i.e. *direct claim*) - allows for the better protection of the interests of road carriers.

The change was operated by Law nr. 9/2013, dated 4 July 2013, which – besides changes in some “articles” – introduces some so named “additional provisions”, one of them, the “Sixth”, stating that in the case where the actual carrier does not receive full payment for his services from the company (contractual carrier or forwarding agent) which directly engaged him, he can make a claim for payment of transport charges directly to the sender of the goods, and/or the remaining preceding companies in that “chain of transport”. The exact provision<sup>1</sup> reads as follows:

*“If transport has been subcontracted or contracted through an independent transport agent, and the transport charges have not been fully paid to the actual carrier by the contractual carrier or agent, that actual carrier may claim for the amount in debt directly to the sender and also to others who preceded him in such chain of transport, except when those contracts for transport were made with public authorities”.*

Although nothing is expressly said to this respect, this provision seems to be applicable also to foreign carriers who have a contractual relationship with Spanish partners, in the case that the sender is a company established in Spain, for it should be considered a “rule of procedure”, and all procedural rules are applicable in Spain no matter what the nationality of litigants or other circumstances of the case may be (art. 8.2 of The Spanish Civil Code), if related to an international carriage, provided the requirements of CMR art. 31.1 are fulfilled.

In order to benefit from this provision, it is advisable for the carriers concerned to send first of all, a friendly extrajudicial claim in writing (by any means making evidence of its text) to the sender.

In this claim, preferably in Spanish, the carrier should indicate his own name and address, those of the contractual carrier or forwarding agent who engaged him directly, and those of the sender of the goods (receiver of the letter of claim). He should also include details regarding the transport service (places or origin and destination, consignee, type of goods, etc.), a reference to his attempt to recover the price from the contractual carrier or forwarding agent who directly engaged him, and to the negative result of it. In addition, copies of available documents concerning the role of each company in the whole operation should be enclosed, as well as of the transport contract or CMR consignment note. Finally a reference to the new additional article 6 of Law nr. 9/2013 dated 4 July 2013 using the Spanish words “*Disposición Adicional Sexta de la Ley 9/2013 de 4 de julio*” should be made. If this friendly claim does not succeed, a formal legal claim – before the Courts competent on commercial subjects (“*Juzgado de lo Mercantil*”) or to the Arbitration Boards for Transport (“*Junta Arbitral del Transporte*”) depending on the amount of the claim, may be initiated.

As time limitation period is not expressly provided for in this new regulation, it is understandable that the general period for claims for the payment of transport charges –15 months since the contract of carriage was made (art. 79 of the Law 15/2009 dated 11 November, regulating contracts for the transport of goods by road), is applicable. A written claim by the actual carrier suspends such a period.

This new provision and the whole Law itself can be found in Spanish under the following link:

[www.boe.es/boe/dias/2013/07/05/pdfs/BOE-A-2013-7320.pdf](http://www.boe.es/boe/dias/2013/07/05/pdfs/BOE-A-2013-7320.pdf)

Once the document is on your screen, for reading the provision only, go to page 50287 (page 49 of the file) – “Disposición adicional sexta”. The letters “BOE” stand for Spanish Official Journal.

For any further details, and also for making claims of this kind, please contact Mr Francisco Sánchez-Gamborino, Attorney-at-law, Legal Adviser of ASTIC and Vice-president of the IRU Commission on Legal Affairs at [abogados@sanchez-gamborino.com](mailto:abogados@sanchez-gamborino.com)

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<sup>1</sup> Free translation into English, made by Mr Sánchez-Gamborino, same as the whole present resume.