

CO³ POSITION PAPER:

REPORT ON THE LEGAL FRAMEWORK FOR HORIZONTAL COLLABORATION IN THE SUPPLY CHAIN AND MODEL LEGAL AGREEMENTS

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Deliverable D2.8 ('Report about model legal framework') and
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Executive Summary:

Legal framework for horizontal collaboration in the supply chain

GENERAL

One of the main missions of the CO3 project is to draw up a legal framework which will form a solid basis for horizontal collaboration in the supply chain and which can be used as an objective tool for supply chain partners that actually want to start to collaborate. Lack of clarity and uncertainty with respect to the legal possibilities and impossibilities causes cold feet and can prevent prospective participants to give horizontal collaboration a chance to try to convince them.

In general it is advisable to coordinate 'commercial' and 'legal' processes and involve legal experts in the early stage of a plan (to investigate the possibility) to bundle freight flows. That way it can be avoided that the reservations legal people might have, put a spanner in the works. Enthusiasm and trust are essential for success. Prospective partners who do not discuss the legal hurdles at the right time, risk the enthusiasm and trust.

COMPLICATING FACTORS

For many reasons it is a complicated work to 'catch' horizontal collaboration between shippers in the supply chain in contracts. Different groups of market participants are involved. The concept is innovative and takes place in the area of tension between competition and trust. The collaboration has horizontal and vertical aspects and can only be covered by more multiparty agreements. Furthermore, various areas of international and national law are involved which requires a multidisciplinary approach. Competition law often seems to be the main concern of market participants; however general civil law, (international) transport law and international private law aspects need to be reviewed as well. As a rule the collaboration will have an international character. Parties from different countries will be involved and trade lanes cross borders.

OBJECTS LEGAL FRAMEWORK

These difficulties make a solid legal framework very necessary. The CO3 consortium hopes to contribute to the consciousness-raising process as well as pave the way towards collaboration by providing an objective tool. Although customization on a case-by-case basis will still be possible and even needed, we hope to reach a certain level of standardization. Apart from laying down the arrangements between the parties involved in writing, the legal framework should facilitate and guarantee a smooth working of the collaboration between the shippers by identifying and clearing away legal obstacles and providing quick and clear solutions to remaining potential problems. Other self-evident objects are legal certainty and legal uniformity. A patchwork of individual arrangements would considerably impede the collaboration, if not make it impossible. Therefore parties need to commit to the same legal regime.

STRUCTURE

We have developed a legal framework which exists of three model agreements. One of the assumptions of the CO3 consortium is that a neutral, independent and trusted third party is needed to facilitate the collaboration between the shippers. The model service agreement between the shippers and this trustee however, forms an additional contractual layer between the collaboration agreement between the shippers on the one hand and the carriage contracts between the shippers and the logistic services providers ('LSP's') on the other hand. Important aspects that need to be covered by the collaboration are gain sharing, rules with respect to volume variation, entry and exit

clauses and competition law aspects. CO3 adopts the Shapley Value as well-defined, fair and understandable formula to divide the gains (costs reductions) generated through the collaboration among the shippers.

APPROACH

The first theoretical part of this report on the legal framework for horizontal collaboration in the supply chain gives an overview of the legal aspects that need to be taken into account when parties in the supply chain want to start to collaborate. What are the legal snares and pitfalls and how can parties overcome these difficulties?

CO3 aims to bring theory and practice together. The consortium has developed a legal structure for horizontal collaboration in the supply chain, existing of (a framework of) three model agreements between the different participants involved. This report secondly presents the three model agreements, which have first been developed under Dutch law. Depending on the test cases which will be carried out by the consortium in the course of the project, legal experts in other jurisdictions will be asked to check the legal framework and the model agreements against their own legal systems and to report on the similarities and possible differences. This way, we will be able to confirm if – and to what extent - it is also possible to use the model agreements when parties would opt to contract under the laws of another jurisdiction. We will present the investigation results of and report on this 'conversion' process in a later stage of the project.

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CO³ Project: Background

The EU-funded project CO3 (Collaboration Concepts for Co-modality) aims to develop, professionalise and disseminate information on the business strategy of logistics collaboration in Europe. The goal of the project is to deliver a concrete contribution to increasing vehicle load factors, reducing empty movements and stimulate co-modality, through collaboration between industry partners, thereby reducing cost and transport externalities such as congestion and greenhouse gas emissions without compromising the service level. The project will coordinate studies and expert group exchanges and build on existing methodologies to develop legal and operational frameworks for collaboration via freight flow bundling in Europe. Furthermore, the project consortium of knowledge institutes and specialised industry players will develop new business models for logistics collaboration. The developed tools, technologies and business models will be applied and validated in the market via pilot studies. Finally, the CO3 consortium will promote and facilitate matchmaking and knowledge-sharing through conferences and practical workshops to transfer knowledge and increase the market acceptance of collaboration.

The core of the CO3 project is what is referred to as the *applied research cycle*. This cycle has been set up as a continuous learning and feedback loop between the models and tools needed for supporting collaborations, the most suitable business models for groups of companies wanting to collaborate and finally the actual test cases for collaboration. These elements are developed under individual work packages as shown below.

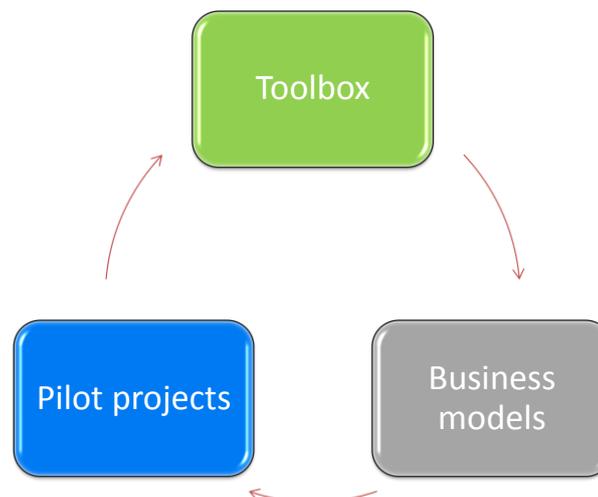


FIGURE 1: THE CO3 APPLIED RESEARCH CYCLE

CO³ Project Consortium

Coordination:



Tools and techniques: Strengthen the operational and legal framework



Identifying appropriate Collaborative business models:



The Logistics Laboratory: Case studies (CO³ Trustee)



Knowledge transfer and networking

