

Netherlands prepares to adopt Rotterdam Rules

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Background

Bills before Parliament

Entry into force

Comment

With two bills recently submitted to Parliament, the Netherlands is preparing to adopt the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (the Rotterdam Rules) into Dutch law.

Background

The Rotterdam Rules were adopted in December 2008. They provide mandatory standards of liability for loss or damage arising from the international carriage of goods by sea and are a successor to earlier international conventions governing the liability regime in the maritime sector – namely:

- the Hague Rules 1924;
- the Hague-Visby Rules 1968; and
- the Hamburg Rules 1978.

The Rotterdam Rules also apply to multimodal transport involving an international sea leg and deal with a range of issues not previously subject to mandatory international law.

Bills before Parliament

When enacted, the first bill will give the four separate governments within the Kingdom of the Netherlands (ie, the Netherlands, Aruba, Curacao and Sint Maarten) the power to ratify the Rotterdam Rules and denounce the Hague-Visby Rule regime that they may be party to. Currently, the Visby Protocol 1968 applies in the European part of the Netherlands, and on Aruba and Curacao, whereas the SDR Protocol 1979 applies only in the European part of the Netherlands and on Curacao. At present, the government of the entire kingdom foresees the actual ratification of the Rotterdam Rules for only the European part of the Netherlands.

In this regard, the second bill aims to bring the legislation of the European part of the Netherlands (ie, the country's Civil Code) into line with the Rotterdam Rules. Under Dutch law, the legislation need not be amended to give the Rotterdam Rules the force of law: the Rotterdam Rules are considered a self-executing convention. However, the government has long preferred to align international and national rules relating to the carriage of goods and persons. The Civil Code will therefore be stripped of the Hague-Visby-related provisions and any others that are thought to be contrary to the Rotterdam Rules. Instead, a provision will be introduced that leads to the application of the Rotterdam Rules beyond the scope rule of the convention itself. Unlike the current situation, where most of the provisions of the Hague-Visby Rules have been translated into Dutch and incorporated into the text of the Civil Code, the provisions of the Rotterdam Rules will be incorporated into the Civil Code only by reference, and not by transposing the convention's full text.

Entry into force

While the parliamentary procedure is not expected to take long, the approval of both bills will not

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lead to the immediate ratification of the convention or entry into force of the national legislation.

The explanatory notes to both bills clarify that the government will be free to decide on the date of the actual ratification and entry into force. It is stated that this may depend on the ratification of the Rotterdam Rules by the Netherlands' neighbouring countries (eg, Germany and France) and major trading partners (eg, China and the United States).

Comment

Similar to the legislation which preceded them, the Rotterdam Rules represent an attempt to achieve a workable compromise between cargo and carrier interests in terms of the apportionment of liability. They seek to establish a comprehensive, uniform legal regime governing the rights and obligations of shippers, carriers and consignees under contracts for door-to-door shipments that involve international sea transportation.

To date, although the Rotterdam Rules have been signed by many maritime nations, including the United States, they have been ratified by only three countries – some way short of the 20 ratifications needed to trigger their entry into force. However, with its recent legislative efforts, the Netherlands has given a clear sign of support in respect of the Rotterdam Rules. This will be appreciated by those convinced that the Rotterdam Rules are the way forward for the carriage of goods in this age of e-commerce.

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