

**COMPARATIVE STUDY OF "RESIDUAL JURISDICTION"
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:**

NETHERLANDS

PREPARED BY:

**MARIELLE KOPPENOL-LAFORCE (M.E.) & FREERK VERMEULEN
HOUTHOFF BURUMA N.V.
GUSTAV MAHLERPLEIN, 50
1082 MA AMSTERDAM – THE NETHERLANDS**

(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

Jurisdiction of the Dutch courts in civil and commercial matters is governed primarily by articles 1 to 14 of the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*). These provisions came into force on 1 January 2002 as part of an overall revision of Dutch civil procedure. These jurisdiction provisions were largely modelled on the Brussels Convention and, after 2002 on the Brussels I Regulation, and are partly a codification of the existing Dutch case law.¹

According to the parliamentary history² of these provisions, the Dutch provisions should, in principle, be applied and interpreted in accordance with the application and interpretation of the parallel provisions in the Brussels I Regulation; however, the Dutch courts have a discretion to depart from this if necessary because of differences between the aims of the Dutch jurisdictional provisions and those of the Brussels I Regulation and Lugano Convention.³ In most cases, however, the interpretation of the Brussels I Regulation by the European Court of Justice is to be the guideline.

Before 1 January 2002, the general rule applied in Dutch case law was that the jurisdiction of the Dutch courts was based on the statutory provisions governing the domestic, geography-based jurisdiction of the Dutch district courts. This general rule as developed by the courts has now been replaced by specific statutory provisions relating to jurisdiction. As a consequence, jurisdiction in the Netherlands is governed mostly by statute or treaty. The earlier case law has become of limited significance. The main sources of the Dutch law on jurisdiction are therefore statutes and multilateral treaties. To a lesser extent, the case law and bilateral treaties are also sources of law on this subject.

¹ MvT, Parl. Gesch., Herz. Rv. p. 80.

² Kamerstukken II 1999-2000, 26 855, nr. 3, p. 33 en 36.

³ Nota, Parl. Gesch., Herz. Rv. p. 107. See also the remarks in connection with the special jurisdiction grounds of article 6 Civil Procedure Code (see C. 12 and 13).

- a) The various statutory and treaty provisions relating to jurisdiction over the matters regulated by the Brussels I Regulation include the following⁴.

General Dutch statutory provisions on jurisdiction

- Dutch Civil Procedure Code, articles 1-3, 4-5 (divorce and parental responsibility), 6-14 and 767
- Dutch Civil Code, Book 1, articles 10 and 14

Company law - Dutch statutory provisions relating to jurisdiction

- Dutch Civil Code, Book 2, articles 50a, 53a, 131, 149, 241 and 259 (directors' and supervisory board members' liability)

Transport law - Dutch legal provisions relating to jurisdiction

- Dutch Civil Procedure Code, articles 621, 625, 629, 635, 637, 638, 640, 641 and 642a, read in conjunction with:
 - Dutch Civil Code, Book 8, articles 168, 170, 173, 174, 184, 194, 541, 568, 574, 575, 623, 624, 625, 750, 751, 752, 784, 1033, 1034, 1035, 1060, 1061, 1062, 1218, 1220, 1678 and 1680;
 - Commercial Code, article 449;
 - Commercial Code, articles 383, 439, 445, 448, 450 (employment law in respect of shipping crews);
 - Dutch Civil Code, Book 3, article 16;
- Oil Tankers Compensation Fund Act (*Wet schadefonds olietankschepen*), articles 2 and 5

Transport law - Treaty provisions relating to jurisdiction

- Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, article 28;
- International Convention relating to the Arrest of Sea-Going Ships, articles 7 and 9;
- Convention on the Contract for the International Carriage of Goods by Road (CMR), articles 31 and 39;
- Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) (Appendix to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980), articles 52, 60 and 61;

⁴ In this overview and in this report in general, the following abbreviations are used:

- Dutch Civil Procedure Code ("DCPC") = *Wetboek van Burgerlijke Rechtsvordering*
- Dutch Civil Code ("DCC") = *Burgerlijk Wetboek*
- Commercial Code = *Wetboek van Koophandel*

- Uniform Rules concerning the Contract for International Carriage of Goods by Rail (Appendix B to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980), articles 56, 63 and 64;
- Revised Convention on Navigation on the Rhine (*Herziene Rijnvaartakte / Convention Révisée pour la Navigation du Rhin*), articles 35, 35 second part, 35 third part, 37, 37 second part, 38;
- Convention on Employment Conditions for Rhine Sailors (*Verdrag betreffende de arbeidsvoorwaarden van rijnvarenden / Accord concernant les conditions de travail des bateliers rhénans*), article 26; and
- Convention on Limitation of Liability of Maritime Claims, article 11.

Intellectual property - Dutch statutory provisions relating to jurisdiction

- Patent Act 1995 (*Rijksoctrooiwet 1995*), articles 80, 81, 83 and 88;
- Patent Act 1910 (*Rijksoctrooiwet 1910*), articles 54, 55 and 56;
- Trade Names Act (*Handelsnaamwet*), article 6

Intellectual property - Benelux provisions relating to jurisdiction

- Uniform Benelux Act on Marks (*Eenvormige Beneluxwet op de merken / Loi uniforme Benelux sur les marques*), article 37;
- Uniform Benelux Act on Designs and Models (*Eenvormige Beneluxwet inzake Tekeningen of Modellen / Loi uniforme Benelux en matière de Dessins ou Modèles*), article 37;

Intellectual property - Treaty provision relating to jurisdiction

- Convention on the Grant of European Patents (European Patent Convention): Protocol on jurisdiction and the recognition of decisions in respect of the right to the grant of a European Patent (Protocol on Recognition), articles 1 to 8;

Third-party liability - Dutch statutory provisions relating to jurisdiction

- Dutch Civil Procedure Code, article 1008 (return of cultural objects unlawfully removed from the territory of a Member State)

Third-party liability - Treaty provisions relating to jurisdiction

- Convention on Third Party Liability in the Field of Nuclear Energy, articles 3, 4, 6 and 13

b) The following cases could be characterised as landmark cases:

- Civil Procedure Code, art. 7: Supreme Court 20 September 2002, NJ 2005, 40;
- Civil Procedure Code, art. 8 and 767: Supreme Court 17 December 1993, NJ 1994, 348 and 350;
- Civil Procedure Code, art. 12: Supreme Court 22 December 1989, NJ 1990, 689; HR 3 July 1995, NJ 1997, 54;
- Civil Procedure Code, art. 13: Supreme Court 19 March 2001, RvdW 2004, 51.
- Civil Procedure Code, art. 629: Supreme Court 16 January 1998, NJ 1999, 284; Supreme Court 14 February 2003, RvdW 2003, 36;
- Civil Procedure Code, art. 643a: Supreme Court 28 February 1992, NJ 1992, 652; Supreme Court 1 July 1992, NJ 1992, 653;
- Convention on Limitation of Liability of Maritime Claims, art. 11: Supreme Court 20 December 1996, NJ 1998/489

2. Specific Rules (or Not) for Transnational Disputes

Articles 1 to 14 of the Civil Procedure Code contain jurisdictional rules that apply only to international situations. These provisions provide only for the international jurisdiction of the Dutch courts.⁵ However, the principle that international jurisdiction is derived from domestic jurisdiction (see A.1) has not been abandoned completely. According to article 10 of the Civil Procedure Code, the Dutch courts have jurisdiction as *forum arresti* under article 767 of the Civil Procedure Code and if domestic jurisdiction is specifically given to the Dutch courts by statute. To prevent that the old system whereby the cross-border jurisdiction of the Dutch court would be given any time a domestic rule of jurisdiction pointed to a Dutch court, would be revived again, it is explicitly stipulated that the common rules for writ of summons proceedings (articles 99 to 110 of the Civil Procedure Code) and for petition proceedings (articles 262 to 270 of the Civil Procedure Code)⁶ are exempted from application. The jurisdiction rules for these two sorts of proceedings are including the forum of the plaintiff, which forum has been abandoned in the cross-border rules of jurisdiction as set out in article 1-14 DCPC. Article 10 DCPC solely refers to specific domestic jurisdiction rules, such as the rules for maritime issues. To know whether a domestic rule of jurisdiction qualifies as a rule that can serve to establish the jurisdiction of the Dutch courts as such in cross-border cases, the parliamentary history⁷ provides some assistance. Such this is only the case if (i) articles 1 to 14 DCPC do not provide for jurisdiction of the Dutch courts in the relevant matter and (ii) it does not follow from the relevant specific provision on domestic jurisdiction that it only applies to internal, as opposed to cross-border, disputes.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

⁵ MvT, Parl. Gesch., Herz. Rv. p. 77.

⁶ This generally refers to the domestic jurisdiction of the Dutch courts in writ of summons proceedings (article 99-110 DCPC) and petition proceedings (article 262-270 DCPC). These rules provide that a Dutch court has jurisdiction within the Netherlands based on the domicile of the defendant, domicile of the petitioner, place of tort, place of immovable, place of statutory seat, etc.

⁷ MvT, Parl. Gesch. Herz. Rv, p. 117.

There is no set of national rules specifically designed to govern the jurisdiction of courts in accordance with article 4(1) of the Brussels I Regulation. The general provisions of articles 1 to 14 of the Civil Procedure Code also apply if the defendant is domiciled in a non-EU state. The same applies to specific statutory jurisdiction provisions that are applicable by operation of article 10 of the Civil Procedure Code.

4. Influence of EU Law

As stated in the answers to questions A.1 and A.2 above, Dutch cross-border jurisdictional rules are highly influenced by the Brussels I Regulation. To a great extent, Dutch lawmakers have modelled the general cross-border jurisdiction provisions in articles 1 to 14 of Civil Procedure Code after the Brussels I Regulation.

However, these articles are somewhat broader in scope to ensure that it remains possible to obtain a judgment in the Netherlands⁸ if the Brussels I Regulation or the Lugano Convention does not apply.

5. Impact of Other Sources of Law

Dutch constitutional law principles have scarcely any impact at all on the application of national jurisdiction rules in the Netherlands. Public international law principles do play an important role with respect to the immunity from jurisdiction that is enjoyed by a foreign state as a defendant in Dutch proceedings (*acta iure imperii*). Human rights principles, especially the right to access to the court under article 6 of the ECHR, were relevant in developing the *forum necessitatis* doctrine in the period prior to codification on 1 January 2002.⁹

6. Other Specific Features

One specific feature in Dutch law with respect to the exercise of jurisdiction by Dutch courts in cross-border disputes is that the Dutch court does not have to ascertain on its own motion whether it has jurisdiction if the court's jurisdiction is not challenged by the defendant and the case is not one relating to public order.¹⁰

Another feature is that if the court of first instance does make an interlocutory decision that it has jurisdiction, an appeal against that jurisdiction decision is only available if and when a final

⁸ MvT, Parl. Gesch. Herz. Rv, p. 80.

⁹ See *inter alia* Ibili, F. *Gewogen rechtsmacht in het IPR. Over forum (non) conveniens en forum necessitatis* (diss. VU Amsterdam), P. Vlas en F. Ibili, *De nieuwe commune regels inzake de rechtsmacht van de Nederlandse rechter*, WPNR 6527, p. 318. Hoge Raad 20 januari 1984, *NJ* 1984, 751, Conclusie van Advocaat-Generaal J.K. Franx § 11 vóór Hoge Raad 13 februari 1987, *NJ* 1987, 1014, Hof 's-Gravenhage 21 December 2005, *NJF* 2006, 154. See further art. 9 sub b en c en MvT en NV II, Parl. Gesch. Herz. Rv, p. 114 en 116-117.

¹⁰ This follows *inter alia* from MvT, Parl. Gesch. Herz. Rv, p. 113-114. See further Polak (2005), T&C Rv, aant. 10 bij afdeling 1 van titel 1.

judgment on the merits of the case is given; however, there is an exception if the court grants leave to appeal against the interlocutory decision,¹¹ which the court may do on its own motion or on the application of a party.

A third important feature in Dutch law with respect to matters of jurisdiction is that the erroneous application of the law of a foreign state is not a ground for appeal to the Supreme Court of the Netherlands (*Hoge Raad*).

A fourth feature is that, in contrast to the Brussels I Regulation, articles 1 to 14 of the Civil Procedure Code distinguish between proceedings that are originated by way of writ of summons ("writ of summons proceedings") and those that are originated by way of petition ("petition proceedings").

7. Reform

There is currently no plan to amend the rules on cross-border jurisdiction in the Netherlands.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

Please refer to the answer to question A 1) and Annex 1.

9. Practical Impact of international conventions with third states

The practical impact of the multilateral treaties on transport and intellectual property is significant, as disputes in these fields of the law are predominantly international in nature. Other treaties between the Netherlands and other countries seem to be of rather limited practical significance.

¹¹ See article 337 § 2 Civil Procedure Code and HR 14 July 2006, NJ 2006, 432. This also holds for appeals to the Supreme Court, HR 4 February 2005, NJ 2005, 2.

(C) Applicable National Rules Pursuant to Article 4 of the Brussels I Regulation

10. Structure

Dutch legal rules on jurisdiction for actions against defendants that are not domiciled within the EU can be found either in the Brussels I Regulation, in international conventions or (if no convention is applicable) in articles 1 to 14 of the Dutch Civil Procedure Code (art. 1 DCPC). Articles 2 to 9 and article 11 contain the rules for jurisdiction in cross-border disputes.

Apart from the grounds of jurisdiction that are set out explicitly in the articles 2 to 9 and 11, according to article 10 of the Dutch Civil Procedure Code, the Dutch courts also have jurisdiction in cross-border disputes if other articles on domestic jurisdiction in Dutch legislation provide for such. However the third part of the second title of the Dutch Civil Procedure Code (writ of summons proceedings) and the second part of the third title (petition proceedings) may not be applied (See Question A(2)). Before 1 January 2002, these grounds for exercising jurisdiction in domestic national disputes also functioned as grounds for exercising jurisdiction in cross-border disputes. In essence, the former principle of “distribution is attribution” was abolished when the amendments relating to jurisdiction in cross-border disputes were introduced into the Dutch Civil Procedure Code on 1 January 2002.

However, it would have been too rigid and too complicated to provide specific articles for every possible ground for the jurisdiction of the Dutch court in cross-border disputes in this part of the Dutch Civil Procedure Code. Also, the overall intention of the Dutch lawmakers was for the grounds in the Dutch rules to be closely related to the grounds in the European conventions and regulations, including the Brussels I Regulation (back then still the Brussels Convention). Article 10 expressly refers to article 767 of the Dutch Civil Procedure Code. (See Question C(12)(f)). Article 10 is not limited in application just to article 767 DCPC, however. It also applies to other specific statutory grounds for exercising jurisdiction - for example, maritime disputes under article 629 DCPC. (See Question C(12)(a)).

11. General Jurisdiction

The general rules are to be found in articles 2 and 3 of the Dutch Civil Procedure Code. Article 2 is applicable to writ of summons proceedings and provides jurisdiction for the Dutch courts if the defendant is domiciled in the Netherlands. Article 3 is applicable to petition proceedings and provides for the jurisdiction of the Dutch courts if (i) any petitioner, or any of the interested parties referred to in the petition, has his domicile in the Netherlands, or if (ii) the petition is related to writ of summons proceedings that are pending in the Netherlands, or if (iii) the matter is otherwise sufficiently connected with the jurisdiction of the Netherlands. Both categories of proceedings can be applicable to natural persons and legal persons. They cover all possible disputes regardless whether these are commercial or family law related.

The domicile of a natural person is his or her place of residence (i.e. where he or she actually lives). In the absence of this, domicile is the place of actual abode (article 1:10(1) DCC).¹²

The domicile of a legal entity is where the seat is located according to statute (for public legal entities) or according to the articles of association or by-laws (art. 1:10 DCC). For matters relating to an office or branch, a natural person or legal entity also has domicile at the location of the office or branch (art. 1:14 DCC). The Dutch continental shelf is deemed to be part of the Dutch territory for the purpose of international jurisdiction (art. 13 DCPC).

Articles 4 and 5 of the Dutch Civil Procedure Code provide the Dutch courts with special jurisdiction over family matters, specifically over divorce (including registered partnership) of natural persons (article 4) and over parental responsibility and the protection of minors (article 5).

Articles 6 and 6A of the Dutch Civil Procedure Code give the Dutch courts jurisdiction in a few specific cross-border situations. (See Question C(12)). Article 7 provides a Dutch court with jurisdiction over co-defendants if proceedings are pending in the Dutch court. (See Question C(14)(a).) Article 8 relates to choice of forum. If a Dutch court has no jurisdiction on any of the other grounds, article 9(1) gives the Dutch court jurisdiction in a cross-border case if it relates to a specific legal relationship at the free disposal of parties and the defendant or interested party has appeared and the party is not there exclusively or partly to contest the jurisdiction of the Dutch court - but the court will not exercise jurisdiction if there is no reasonable interest involved.¹³ This is considered a "silent" (or implied) choice of forum. Article 9(2) gives the Dutch courts jurisdiction on the grounds of *forum conveniens* and *forum necessitatis*. (See Question C(16).) Article 12 deals with *lis abilis pendens*. (See Question E(19)(b))

Article 11 of the Dutch Civil Procedure Code requires a motion claiming lack of jurisdiction to be made before any other defence is submitted. Failure to do so results in the Dutch courts having jurisdiction. (See Question A(6)).

¹² Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 2, aant. 2

¹³ There have not been any reported cases in which a party was refused access to the Dutch court on the grounds of this latter clause. It has been no more than a theoretical possibility so far.

12. Specific Rules of Jurisdiction

a) Contract

General

The jurisdictional grounds in article 4 and 5 are the only jurisdictional grounds that are exclusive in nature. Article 6 provides for alternative grounds for jurisdiction for the situations that the other grounds do not already grant jurisdiction to the Dutch courts. However, there is no rigid rule about this. One can refer to a ground of article 6 even if another ground also provides the Dutch courts with jurisdiction. Article 9 explicitly states that it is applicable only if articles 2 to 8 do not already provide the Dutch courts with jurisdiction.

Dutch courts have jurisdiction over contractual obligations if the place of performance of the obligation that is the basis of the claim or application is or will be in the Netherlands (art. 6 DCPC).

Unless agreed otherwise, the place of performance is deemed to be the Netherlands in the following situations:¹⁴

- in the case of a contract for the sale of moveable goods, if under the contract the goods were delivered or should have been delivered in the Netherlands (art. 6A(a) DCPC); and
- in the case of the provision of services, if under the contract the services were provided or should have been provided in the Netherlands (article 6A(b) DCPC).¹⁵

These clauses are in principle to be interpreted by the Dutch courts in line with the European Court of Justice's interpretation of that same clause under the Brussels I Regulation, since the Dutch clauses are literally modelled on those under the Brussels I Regulation. However the courts have a certain discretion here because the scope of these national rules is less restricted than under the Brussels I Regulation (See Question A(4)).¹⁶

Specific contracts

(i) The Dutch court has jurisdiction over contractual claims between a company and a managing director or supervisory director if the company is domiciled in the Netherlands (which will only be the case with Dutch companies)(DCPC, art. 10; DCC, arts. 2:131 & 2:149 (public liability company) and arts. 2:241 & 2:259 (limited liability company).

¹⁴ This further clarification came into force on 15 October 2005 (*Wet van 8 september 2005, Stb.2005, 455* (Aanpassingswet Rv)).

¹⁵ Polak (2005), T&C Rv, art. 6A, aant. 1-5; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6A, aant. 1.

¹⁶ MvT, Parl. Gesch. Herz. Rv, p. 105, Nota, Parl. Gesch. Herz. Rv, p. 107; Polak (2005), T&C Rv, art. 6, aant. 8; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 9.

This includes jurisdiction over a claim for breach of management duties or supervisory duties (art. 2:9 DCC), a claim for violation of the duty to keep books and to maintain proper accounting (art. 2:10 DCC), and a claim for liability for the insolvency of a public or private limited liability company (arts. 2:138 & 2:248 DCC). Article 2:149 of the Dutch Civil Code states that the obligations stated in articles 2:9 and 2:138 of the Dutch Civil Code are also applicable to supervisory managers if and in so far as it concerns the performance of their tasks. The jurisdictional rules in articles 2:131 and 2:141 are equally applicable. Article 2:131 of the Dutch Civil Code applies likewise by way of reference in article 2:50a of the Dutch Civil Code to directors and supervisory directors of Dutch associations with full legal capacity that are subject to the levy of corporate income tax (art. 2, Corporate Income Tax Act) by virtue of article 2:53a of the Dutch Civil Code, which refers to article 2:50a of the Dutch Civil Code.

Article 2:131 of the Dutch Civil Code is also applicable to Dutch cooperative associations and mutual insurance associations. The jurisdiction provision in article 2:131 (public liability company) and article 2:141 (limited liability company) of the Dutch Civil Code also applies to a claim made by either a director or a company for the dissolution of the employment contract between the director and the company (art. 7:685 DCC).

The domicile of a legal entity is where the seat is located according to statute (for public legal entities) or according to the articles of association or by-laws (art. 1:10 DCC). For matters relating to an office or branch, a natural person or legal entity also has domicile at the location of the office or branch (art. 1:14 DCC).¹⁷

(ii) The Dutch courts have jurisdiction over disputes about the validity, invalidity or dissolution of a company, partnership or legal entity that has its seat in the Netherlands. The Dutch courts also have jurisdiction over the validity, invalidity and the legal consequences of their decisions, the rights and obligations between a partnership or company and their partners or shareholders (article 6(h) DCPC).¹⁸

This is not limited just to contractual claims. The reason why the text in the Dutch provision departs from the text in the parallel article 22(2) of the Brussels I Regulation is that the annulment of the decisions made by corporate organs could have legal effects for the partners and shareholders of that company. The Dutch courts will have jurisdiction if it concerns a Dutch company (meaning a company that has its statutory seat in the Netherlands and was created in accordance with Dutch law).¹⁹ In this sense, the Dutch rule is broader than article 22 of the Brussels I Regulation.²⁰

¹⁷ See also C.10. Polak (2005), T&C Rv, art. 6, aant. 11b; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6, aant. 12 and art. 995, aant. 8 and 10 and Vlas, *Rechtspersonen* (praktijkreeks IPR deel 9), Deventer: Kluwer 2002, nr. 231-234.

¹⁸ Polak (2005), T&C Rv, art. 6, aant. 11; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant 12.

¹⁹ MvT, Kamerstukken II 1999/2000, 26 855, nr. 3, p. 37.

²⁰ Parl. Gesch., Herz. Rv, p. 106.

(iii) The Dutch courts have jurisdiction over claims relating to a ship hire-purchase contract if the domicile chosen in the registration of the ship in the Dutch shipping register is in the Netherlands (DCPC, arts. 10 & 625; DCC, art. 8:784(7) DCC).²¹ This jurisdictional ground is supplemental to any relevant jurisdictional ground under articles 1 to 14 of the Dutch Civil Procedure Code.

(iv) The Dutch courts have jurisdiction over a claim between a carrier and a recipient (not being the sender) that relates to a contract of carriage for carriage from outside the Netherlands to a final destination in the Netherlands (arts. 10 & 629(1) DCPC).²²

It is debatable whether this article applies only if article 6 does not grant jurisdiction or is always applicable, regardless of whether the Dutch courts also have jurisdiction over the claim on the grounds listed in article 6 of the DCPC.²³ A choice of forum clause that refers to another court is invalid unless it refers to a court in the country of domicile of the carrier or the recipient or if the clause is set out in a separate document that does not refer to general conditions (art. 629(2) DCPC).²⁴

b) Tort

General

The Dutch courts have jurisdiction over a tort claim if the place where the harmful event occurred or threatens to occur is situated in the Netherlands (art. 6(e) DCPC).

This clause is in principle to be interpreted by the Dutch courts in line with the European Court of Justice's interpretation of that same clause under the Brussels I Regulation, since the Dutch clauses are literally modelled on those under the Brussels I Regulation. However the Dutch courts do have a certain discretion here. (See Question A(4)).²⁵

Specific torts

(i) The Dutch courts have jurisdiction over a collision claim whereby a ship is involved or where there is damage caused by a sea-going vessel without a collision if the ship is registered in the

²¹ Koopmann (2005), T&C Rv, Van Mierlo, Groene Serie Burgerlijke Rechtsvordering, Kluwer, art. 625, aant. 1.

²² Koopmann (2005), T&C Rv, Van Mierlo, Groene Serie Burgerlijke Rechtsvordering, Kluwer, art. 629, aant. 2..

²³ Eckholdt, NTHR 2005-2, p. 67-72.

²⁴ Koopmann (2005), T&C Rv, Van Mierlo, Groene Serie Burgerlijke Rechtsvordering, Kluwer, art. 629, aant. 3.

²⁵ MvT, Parl. Gesch. Herz. Rv, p. 105, Nota, Parl. Gesch. Herz. Rv, p. 107; Polak (2005), T&C Rv, art. 6, aant. 8; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 9.

Netherlands (arts. 10 & 635 DCPC).²⁶ The court of the geographic location in which the office where the ship is registered (according to the official ship register) is located has jurisdiction.

This rule is not exclusive. It supplements the general rule on jurisdiction over torts described above.²⁷ It is a useful rule if the place where the tort was committed is located outside the Netherlands, but a Dutch registered ship is involved.

(ii) The Dutch courts have jurisdiction over a claim made by a foreign EU or EER Member State for the return of a cultural object that has been unlawfully removed from the territory of an EU or EER Member State if the object is on Dutch territory according to article 1008 DCPC. This follows directly from article 5 of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.²⁸

c) Criminal Proceedings

The victim of a crime can join his or her damage claim to criminal proceedings in the Dutch criminal courts.²⁹ This procedure is governed by article 10 of the Dutch Civil Procedure Code and article 51a of the Dutch Criminal Procedure Code, read in conjunction with articles 3 to 7 of the Dutch Penal Code.³⁰ The Dutch criminal court frequently refuses to consider the merits of a claim that is too complicated. However, in a simple case,³¹ the criminal court may award damages - usually just direct damages.³² The determination of the claim and the determination of the amount of the damages is conducted according to the damages-related provisions in the Dutch Civil Code.³³ A claim is filed by completing a form that will be sent to the victim by the Public Prosecutor's Office. The victim is not required to appear at the hearing.

d) Secondary Establishment

There is no specific jurisdictional ground based on the place where the establishment or branch is located. However, if a claim is made against a company with a seat located outside the EU, the claim can still be brought before the court of the domicile (art. 2, DCPC), which is

²⁶Koopmann (2005), T&C Rv, art. 635, aant. 1-4; Van Mierlo, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 635, aant. 1.

²⁷ Parl. Gesch. Herz. Rv, p. 524-525 and p. 117.

²⁸ Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 1008 Rv, aant. 7.

²⁹ Other options would be to approach the police if the police is dealing with the offence or the Public Prosecutor's Office if this office is dealing with the offence.

³⁰ Because of this possibility, Dutch lawmakers have so far seen no need for the inclusion of an article similar to article 5(4) Brussels Convention/Brussels I Regulation); MvT, Parl. Gesch. Herz. Rv, p. 103; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 3.

³¹ MvT, Parl. Gesch. Herz. Rv, p. 103; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 3.

³² See HR 30 March 2004, *NJ 2004*, 343; HR 18 April 2000, *NJ 2000*, 413; HR 17 February 1998, *NJ 1998*, 449.

³³ F.F. Langemeijer, *Het slachtoffer en het strafproces*, Deventer: Kluwer 2004, p. 106; Kamerstukken I 1989/90 21345, nr. 36, p. 1-2.

considered in this case to be the place of the establishment or branch of the company (art. 1:14 DCC). (See C(12)(a)). This jurisdiction is only valid over claims that concern matters relating to the establishment or branch. Dutch lawmakers saw no need to have a provision in Dutch law similar to article 5(5) of the Brussels Convention/Brussels I Regulation.³⁴

e) Trust

The Dutch legislator has decided that there was not enough need to have a provision in Dutch law similar to article 5(6) of the Brussels I Regulation.³⁵ It was considered highly unlikely that a trust would ever be established in the Netherlands.

f) Arrest and/or location of Property

Article 10 of the Dutch Civil Procedure Code expressly refers to article 767 of the Dutch Civil Procedure Code, which states that if there is no other way to become entitled to enforcement in the Netherlands, the claimant or attaching party may commence a claim on the merits in the Netherlands by applying to the court that in interlocutory proceedings granted leave for the attachment or for the attachment preventing security or attachment lifted.³⁶ The Dutch courts may only exercise jurisdiction on this basis if there is no jurisdiction on the grounds stated in articles 1 to 9 or 11 to 14 of the Dutch Civil Procedure Code and if there is no regulation or convention allowing enforcement of a decision of the foreign state in the Netherlands.

Article 767 of the Dutch Civil Procedure Code does not apply to parties who have agreed to a choice of forum clause by which a foreign court has been given jurisdiction over disputes to the exclusion of all other courts or to parties who have agreed to an arbitration clause, even if there is no regulation or convention under which this foreign decision can be enforced in the Netherlands.³⁷ This is even the case for a choice of forum clause in an employment contract.³⁸

³⁴ MvT, Parl. Gesch. Herz. Rv, p. 103; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 3.

³⁵ MvT, Parl. Gesch. Herz. Rv, p. 103; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 3.

³⁶ Jongbloed (2005), T&C Rv, art. 767, aant. 1-5; Van Mierlo, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 767 Rv., aant. 3.

³⁷ HR 17 December 1993, NJ 1994, 348 and 350 (Esmil-decisions) and HR 16 June 1995, NJ 1996, 256 (SCI/EAC). In this case, new proceedings have to be commenced in the Netherlands for recognition of that decision (article 431(2) Civil Procedure Code). Jurisdiction in the Netherlands will be exercised by the court of the place where the execution of assets can take place if there is no other ground for jurisdiction (such as if the defendant is not domiciled in the Netherlands). This can be considered as the place where the obligation in question (the claim out of the foreign decision for the payment of money) has to be performed, so jurisdiction is granted by article 6(a) of the Dutch Civil Procedure Code. Jurisdiction can also be created because assets are attached under a conservatory attachment. Article 767 of the Dutch Civil Procedure Code then creates jurisdiction for the main proceedings for enforcement of the foreign decision.

³⁸ HR 25 April 1997, NJ 1998, 665 (Seaventure).

g) Residual grounds of special jurisdiction over other matters not mentioned above

- The Dutch courts have jurisdiction in matters relation to real rights to immovable property located in the Netherlands and to the renting and renting out (*huur en verhuur*) and the leasing and leasing out (*pachting en verpachting*) of such property (art. 6(f) DCPC). This jurisdiction is not exclusive.³⁹
- The Dutch courts have jurisdiction if the ship is registered in the Dutch shipping register (the court of the chosen domicile in that register) for matters referred to in article 8:168 of the Dutch Civil Code (approval of the accounting by the members of the shipping company) and the request for sale of the ship or an interest therein (arts 10 & 621 DCPC).
- The Dutch courts have jurisdiction over request for certain judicial inquiries (art. 633 DCPC) if the objects are situated in the Netherlands. It concerns inquiries in connection with the condition of goods delivered (article 8:494 9seagoing shipping), 959 (inland shipping) and 1135 (carriage by road) DCC), or suspected loss or damages of the goods delivered (article 8:495 (seagoing shipping), 960 (inland shipping) and 1135 (carriage by road) DCC)
- In addition to having jurisdiction under articles 2 to 9 of the Dutch Code of Civil Procedure, the Dutch courts may exercise jurisdiction over matters relating to the provision of assistance to ships if either the place of the office where the ship is registered in the official shipping register (arts. 10, 635 & 637 DCPC) or the place where the assistance was provided (arts. 10 & 637 DCPC) is situated in the Netherlands.⁴⁰
- The Dutch courts have jurisdiction in certain specific matters relating to general average (*avarij-grosse*). If the undertaking ended in the Netherlands, any person that is of the opinion that he has a right to be compensated in general average or that he will have to contribute to a general average, is entitled to ask the Dutch court in the district where the undertaking ended to appoint an average adjuster (art. 638 DCPC).
- The Dutch courts have jurisdiction in matters relating the approval of average adjustment (*dispatche*) filed with a Dutch court (art. 641 DCPC).
- The Dutch courts have jurisdiction over a request for the amount to which contractual or non-contractual liability or liability out of the mere ownership of or preferential right on a ship, or out of the mere custody of the ship shall be limited by the institution of a fund if the office where the ship is registered (according to the official ship register) is in the Netherlands, and the Rotterdam Court has jurisdiction if the ship is not registered in the public register (arts. 10 & 642a DCPC).⁴¹
- The Dutch courts have jurisdiction over disputes relating to the remuneration, if the preservation took place in the Netherlands (article 448 of the Commercial Code).

³⁹ Polak (2005), T&C, art. 6, aant. 9b; Vlas *Groene Serie Burgerlijke Rechtsvordering*, art. 6, aant. 10.

⁴⁰ Koopmann (2005), T&C Rv, art. 637, aant. 1-2; Van Mierlo, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 637, aant. 1.

⁴¹ Koopmann (2005), T&C Rv, art. 642a, aant. 2; Van Mierlo, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 642a, aant. 1. HR 28 February 1992, NJ 1992, 652 (Sylt); HR 1 July 1992, NJ 1992, 653 (Volvox Hollandia); Sherbao 20 december 1996, NJ 1998, 489, HR 29 September 2006, RvdW 2006, 897

- The Dutch courts have jurisdiction over disputes about the share of crew members in the tow charges if the ship arrived or the shipping company has its seat in the Netherlands (article 449 of the Commercial Code).
- The Dutch courts have jurisdiction over the matters relating to payment of compensation to crew members if the crew members become unemployed because of the loss of ship due to shipwreck if the shipping company has its seat in the Netherlands. The sea employer may petition the Dutch court to be relieved from this duty if he suspect that a crew member is to be blamed for gross negligence in relation to the wrecking of the ship (article 450 sub 1 and 4 of the Commercial Code).

13. Protective Rules of Jurisdiction

These are protective rules of jurisdiction in the Netherlands in place for individual employment contracts, agency and consumer contracts.

a) Consumer Contracts

(i) EU domiciled consumer claiming against a non-EU domiciled professional

A consumer may rely on any ground of jurisdiction listed in articles 2 to 14 of the Dutch Civil Procedure Code. A Dutch court has jurisdiction in petition proceedings if the consumer is domiciled in or is habitually resident in the Netherlands, or if the petition otherwise is sufficiently connected to the Netherlands (art. 3 DCPC). In writ of summons proceedings the Dutch court has jurisdiction if the place of performance of the obligation which is the basis of the claim or application is in the Netherlands (arts. 6(a) & 6A DCPC), or if the harmful event occurred or threatens to occur in the Netherlands (art. 6 (e) DCPC). If the forum chosen is the Dutch court, the Dutch courts have jurisdiction by virtue of article 8(1) of the Dutch Civil Procedure Code. Furthermore, the Dutch courts have jurisdiction if the professional is a co-defendant in proceedings pending against the defendant in the Netherlands (art. 7 DCPC) or if the professional does not contest the jurisdiction (art. 9(a) DCPC) or if the Dutch courts can act as *forum necessitatis* as described in article 9(b) DCPC. (See Questions C(14) and C(16)).

Apart from these general rules, a consumer who is domiciled or habitually resident in the Netherlands can always turn to the Dutch courts if the contract and the contractual circumstances come under the specific requirements of article 6(d) of the Dutch Civil Procedure Code.⁴² A "consumer" within the meaning of article 6(d) of the Dutch Civil Procedure Code is any natural person not acting in the execution of his or her trade or profession who has entered into an agreement with someone who is acting in the execution of his trade or profession. The Dutch courts have jurisdiction over disputes arising from contracts between a consumer and a professional if the professional performs commercial or professional activities in the Netherlands, or directs such activities by any means at the Netherlands and the contract in dispute falls under such activities. In this provision (which has been in effect only since 15

⁴² Polak (2005), T&C Rv, art. 6, aant. 7; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 8

October 2005⁴³), Dutch lawmakers explicitly address e-commerce activities. However the expression “any means” also includes radio and television broadcasting.⁴⁴ Whether any particular activity is directed (at least partly) at the Netherlands is a matter of interpretation, because not all web sites that can be accessed from the Netherlands are necessarily directed at the Netherlands within the meaning of this article. Strong indications that the site is directed at the Netherlands include the use of the Dutch language in the information given about the foreign supplier and the products, and stating that further information is directly available from a source in the Netherlands.⁴⁵

(ii) EU domiciled professional claiming against a non-EU domiciled consumer

A professional may bring a claim against a consumer domiciled in non-EU-state in a Dutch court if there is jurisdiction under articles 1 to 14 of the Dutch Civil Procedure Code. A consumer is treated the same as any other defendant. Consumers who are not domiciled in the Netherlands are not afforded any special protection. Article 6(d) of the Dutch Civil Procedure Code is not applicable because the consumer is not domiciled or habitually resident in the Netherlands.

In petition proceedings, the Dutch courts have jurisdiction if the professional is domiciled or habitually resident in the Netherlands or if the proceedings are otherwise sufficiently connected to the Netherlands (art. 3 DCPC). In writ of summons proceedings, the Dutch courts have jurisdiction over such a claim if the obligation which is the basis of the claim or the application has to be performed in the Netherlands (article 6 (a) and 6a DCPC), or if the harmful event occurred or threatens to occur in the Netherlands (art. 6(e) DCPC). The Dutch courts also have jurisdiction if the consumer is a co-defendant (art. 7 DCPC). If the forum chosen is the Dutch court, the Dutch courts have jurisdiction by virtue of article 8(1) of the Dutch Civil Procedure Code. The Dutch courts also have jurisdiction if the consumer does not dispute jurisdiction (art. 9(a) DCPC) or if the Dutch courts act as a *forum necessitatis* (art. 9(b) & (c) DCPC).

General protective rule

Another protection of the consumer in relation to jurisdiction is the protection of a consumer domiciled or habitually resident in the Netherlands in relation to a choice of forum clause that has been agreed upon before the dispute arose. Even if it is decided that a foreign court has exclusive jurisdiction, a consumer may always apply to the Dutch court of his or her domicile or habitual residence if the dispute concerns an agreement and a consumer within the meaning of

⁴³ Stb. 2005, 455.

⁴⁴ Kamerstukken II 2002/03, 28 863, nr. 3 (MvT), p. 5 and Kamerstukken II 2003/04, 28 863, nr. 5 (NV), p. 8; Polak (2005), T&C Rv, art. 6, aant. 7(d); Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 8.

⁴⁵ Kamerstukken II 2003/04, 28 863, nr. 5 (NV), p. 8; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 8. R.E. van Esch, *Juridische aspecten van elektronische handel* (serie praktijkhandleidingen), Kluwer: Deventer 2006, p. 189. where a long list of indicative factors is presented.

article 6(d) of the Dutch Civil Procedure Code unless such choice of forum clause has been agreed after the dispute has arisen (article 8(3)(b) DCPC).⁴⁶

b) Individual Employment Contracts

(i) Employee domiciled in the EU claiming against a non-EU domiciled employer

If the proceedings are petition proceedings, which is frequently the case in employment cases, an employee may apply to the Dutch courts if he or she is domiciled or habitually resident in the Netherlands or if the petition otherwise has sufficient connection to the Netherlands (art. 3 DCPC).

If an employee usually works in the Netherlands or has most recently worked in the Netherlands, he or she can always turn to the Dutch courts in petition proceedings or writ of proceedings procedures for disputes relating to the individual employment contract (art. 6(b) DCPC). The rule dealing with a person working in more than one country, as found in article 19(2)(b) of the Brussels I Regulation, has not been introduced into Dutch civil procedure because it was considered unnecessary. Article 6(b) of the Dutch Civil Procedure Code applies to an employee or agent which is also working in countries other than the Netherlands.⁴⁷ The Dutch courts will have jurisdiction regardless, but whether a non-Dutch court has jurisdiction will depend on the rules in the other countries. If disputes about an employment contract are pending in more than one country, *lis pendens* rules in each country will need to be applied.

The Dutch courts will even exercise jurisdiction if the work under the individual employment contract is only temporarily being carried out in the Netherlands, but for a Dutch court to exercise jurisdiction over such a claim, under article 6(c) of the Dutch Civil Procedure Code,⁴⁸ the claim must relate to employment terms and conditions or working conditions based on one of the following statutory provisions:

- article 1 of the Act on Working Conditions for Cross-Border Work (*Wet arbeidsvoorwaarden grensoverschrijdende arbeid*);
- article 7 or 15 of the Act on Minimum Wage and Minimum Holiday Allowance (*Wet minimumloon en minimumvakantiebijslag*);
- article 2, sixth paragraph, of the Act on the Generally Binding and Non-Binding Status of Collective Employment Agreements (*Wet op het algemeen verbindend en het onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten*);

⁴⁶ MvT, Parl. Gesch. Herz. Rv, p. 111; Polak (2005), T&C Rv, art. 8, aant. 5 sub c; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 8 Rv, aant. 4.

⁴⁷ MvT, Parl. Gesch. Herz. Rv, p. 104; Polak (2005), T&C Rv, art. 6, aant. 6; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 6.

⁴⁸ This article was inserted by virtue of Wet van 8 september 2005, *Stb.2005*, 455 (Aanpassingswet Rv) and came into force on 15 October 2005.

- article 8 or 11 of the Placement of Personnel by Intermediaries Act (*Wet Allocatie Arbeidskrachten door Intermediairs*); or
- article 5, first paragraph, subparagraph b, d, e and f, of the General Equal Treatment Act (*Algemene wet gelijke behandeling*).⁴⁹

Jurisdiction is also exercised by the Dutch courts in employment or agency disputes under the co-defendant rule (art. 7 DCPC) and where the parties have agreed to give Dutch courts exclusive jurisdiction (art. 8(1) DCPC). The Dutch courts also have jurisdiction if the employer does not contest the jurisdiction of the Dutch court (art. 9(a) DCPC) or if the Dutch courts act as a *forum necessitatis* (art. 9(b) & (c) DCPC).

If the Dutch court would ordinarily have jurisdiction, but the parties have chosen to give exclusive jurisdiction to a non-Dutch court, this choice cannot disadvantage an employee unless the agreement about giving jurisdiction exclusively to the foreign court was entered into after the dispute arose or it is the employee who is relying on the clause to submit the dispute before a foreign court (art. 8(3) & (4) DCPC).⁵⁰

(ii) Employer domiciled in the EU claiming against a non-EU employee

An employer can commence proceedings in a Dutch court for a claim against an employee if the proceedings are petition proceedings and the employer is domiciled or habitually resident in the Netherlands, or if the case is otherwise sufficiently connected to the Netherlands (art. 3 DCPC).

Regardless, an employer may bring either petition proceedings or writ of summons proceedings under article 6(b) and (c) of the Dutch Civil Procedure Code (see above). The Dutch courts will have jurisdiction if the employee habitually works in the Netherlands or has most recently worked in the Netherlands. If the work was just temporary, the courts will have jurisdiction if the claim is about a dispute described in article 6(c); however, it is unlikely that the employer in a claim like this would be the claimant or petitioner.

The Dutch courts will have jurisdiction under the co-defendant rule (art. 7 DCPC) and the choice-of-exclusive-forum rule (art. 8(1) DCPC). The Dutch courts also have jurisdiction if the employee does not contest the jurisdiction of the Dutch court (art. 9(a) DCPC) or if the Dutch courts act as *forum necessitatis* (article 9(b) & (c) DCPC).

If a foreign court is given exclusive jurisdiction in an employment contract, the Dutch courts will still exercise jurisdiction if requested to do so by an employee (art. 8(3) & (4) DCPC).

⁴⁹ Kamerstukken II 2002/03, 28 863, nr. 3 (MvT), p. 5; Polak (2005), T&C Rv, art. 6, aant. 6 sub f; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 7.

⁵⁰ MvT, Parl. Gesch. Herz. Rv, p. 112. This article was slightly amended by the Wet van 8 september 2005, *Stb.2005*, 455 (Aanpassingswet Rv). Polak (2005), T&C Rv, art. 8, aant. 5; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 8 Rv, aant. 4-5.

Each of the parties is at all times entitled, even before the employment contract has commenced to apply, because of serious reasons, to the Dutch courts if such party has its actual place of residence in the Netherlands, or if the whip is situated in the Netherlands (article 383 (shipper) and 439 of the Commercial Code).

The Dutch court has jurisdiction over matters concerning a written statement of payment at the end of the employment to be provided to a crew member by the sea employer if the ship arrived in the Netherlands or if the shipping company has its seat in the Netherlands (article 445 Commercial Code).

c) Insurance Contracts

There are no special jurisdiction ground for cross-border insurance disputes under Dutch law, with one exception – a claim brought by an injured party as the result of a car accident. (See Question C(12)(b)).

An insured, a policyholder, a beneficiary or an insurer can rely on any relevant jurisdictional ground listed in articles 1 to 14 of the Dutch Civil Procedure Code. Moreover, an insured, policyholder or beneficiary can in certain circumstances probably be considered a consumer, in which case they could benefit from the protective grounds of jurisdiction of consumers described under Question C(13)(a).

d) Distribution Contracts

(i) Distribution and franchise

In the Netherlands, there are no protective jurisdictional rules relating to distributorship agreements or franchise agreements.

(ii) Agency

In Dutch civil procedure, there are only protective rules of jurisdiction for agents. No distinctions are made with regard to the size of the agent (i.e. large or small) or its legal character (i.e. natural person or legal entity). The agent has partly the same protection as an individual employee. (See Question C(13)(b)). An agent may always turn to a Dutch court if he or she habitually works or recently worked in the Netherlands (art. 6(b) DCPC).⁵¹

There is no special protection for an agent against the adverse application of a choice of forum clause in which a foreign court has been given jurisdiction. An agent that is a large corporation does not need protection according to the parliament but at the same time no distinction is drawn between large and small agents, so this reasoning is not very convincing.⁵² A prominent

⁵¹Polak (2005), T&C Rv, art. 6, aant. 6 sub c; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 6 Rv, aant. 6.

⁵²MvT, Parl. Gesch. Herz. Rv., p. 112; Polak (2005), T&C Rv, art. 8, aant. 5 sub c; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 8 Rv, aant. 6.

jurist has argued that, with regard to protection from choice of forum clauses, there is room for drawing an analogy between employment contracts and agency contracts in which the agent is a natural person.⁵³ It has also been argued that an agent in the EU should be able to rely on an EU court for enforcement of EU agency-related legal protective measures implemented by the Member States. Even if there is a choice of forum clause giving exclusive jurisdiction to a foreign court, the exclusion of an agent from jurisdictional protection rules could be invalid.⁵⁴

e) Protective Rules in Other Matters

Article 629 (2) DCPC contains a protective rule in favour of the third party holder of a bill of lading in relation to voyages with destination in the Netherlands. Only under specific circumstances a choice of forum for another court than the Dutch courts is deemed to be valid. See sub a, last paragraph, above.

⁵³ Polak, T&C Rv, art. 8, aant. 5(c).

⁵⁴ J.W. Rutgers, NIPR 2003/4, p. 351-355, p. 355.

14. Rules for the Consolidation of Claims

a) *Co-Defendants*

If a Dutch court has jurisdiction in writ of summons proceedings, it will also have jurisdiction over any co-defendant in those same proceedings provided that the claims are so closely connected that it is expedient to hear and determine them together (art. 7(1) DCPC).⁵⁵ This Dutch provision is similar to the corresponding article in the Brussels I Regulation, so the interpretation of the European Court of Justice will be of interest in how the Dutch articles is interpreted by the Dutch courts.⁵⁶

b) *Third Party Proceedings*

If a Dutch court has jurisdiction in writ of summons proceedings, it will also have jurisdiction over a claim by a third party on a warranty or a guarantee unless there is insufficient connection between these claims and the primary claim (art. 7(2) DCPC).⁵⁷ This Dutch provision is similar to the corresponding article in the Brussels I Regulation, so the interpretation of the European Court of Justice will be of interest in how the Dutch courts interpret the Dutch provision.⁵⁸

c) *Counter-Claims*

If a Dutch court has jurisdiction in writ of summons proceedings, it will also have jurisdiction over any counterclaim (art. 7(2) DCPC). This Dutch provision is similar to the corresponding article in the Brussels I Regulation, so the interpretation of the European Court of Justice will be of interest in how the Dutch courts interpret the Dutch provision.⁵⁹

d) *Related Claims*

There is no specific rule other than the rules set forth above allowing a defendant domiciled in a non-EU state to be sued before a Dutch court on the ground that the claim is connected with another claim pending before the Dutch court.

e) *Any Problems Pertaining to Lack of Harmonisation*

⁵⁵ MvT, Parl. Gesch. Herz. Rv., p. 108; Polak (2005), T&C Rv, art. 7, aant. 1-3; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 7 Rv, aant. 4.

⁵⁶ Polak (2005), T&C Rv, art. 7, aant. 2; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 7 Rv, aant. 1.

⁵⁷ MvT, Parl. Gesch. Herz. Rv., p. 108; Polak (2005), T&C Rv, art. 7, aant. 4; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 7 Rv, aant. 1.

⁵⁸ Parl. Gesch. Herz. Rv., p. 108.

⁵⁹ Parl. Gesch. Herz. Rv., p. 108; Polak (2005), T&C Rv, art. 7, aant. 4; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 7 Rv, aant.4.

In Dutch legal practice it is not an issue that there is a lack of harmonisation in the field of consolidation of claims. Usually the differences between the national rules and the rules of the Brussels I Regulation have no impact on the jurisdiction of the Dutch court.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

a) The rules listed in annex I

The rules listed in annex 1 of the Brussels 1 Regulation for the Netherlands - articles 126(3) and 127 of the Dutch Civil Procedure Code - have been repealed. As explained under Question C(10), these rules have not been replaced by similar rules. Thus, there are no longer rules of jurisdiction that qualify as exorbitant jurisdictional rules.

b) Practical use of the rules listed in Annex I

This question - concerning the application of the rules mentioned in annex 1 of the Brussels 1 Regulation - is not applicable as the rules concerned have been repealed, see question 14 (a).

c) Extension of jurisdiction pursuant to article 4(2) of Brussels I

Consequently, there is no relevant case-law.

16. Forum *necessitatis*

Article 9, specifically paragraphs (b) and (c), in the Dutch Civil Procedure Code provides for the Dutch courts to exercise jurisdiction as forum necessitatis.

Under article 9 (b) the Dutch courts have jurisdiction if there is no jurisdiction under articles 2 to 8 of the Dutch Civil Procedure Code but proceedings outside the Netherlands appear to be impossible. A situation like this could arise in situations of factual impossibility (e.g. war, floods or other disasters) or legal impossibility (e.g. denial of access to tribunals because of race or religion).⁶⁰ This article applies to writ of summons proceedings and petition proceedings alike. It is not required that there be any connection with the Netherlands as a prerequisite for the application of article 9(c) of the Dutch Civil Procedure Code.

The Dutch lawmakers said that principle in article 6 of the ECHR, which grants everyone the right to access to a court, was the basis for article 9(b) and (c). If proceedings outside the Netherlands are impossible or unacceptable, the Dutch courts are able to exercise jurisdiction to provide relief. The position of the Dutch lawmakers is not that this clause was meant to function as an exorbitant ground of jurisdiction.

⁶⁰ Parl. Gesch. Herz. Rv, p. 593-595 (Advice State Counsel and Further Report)), 115 -117 (MvT); Polak (2005), T&C Rv, art. 9, aant. 4-5; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 9 Rv, aant. 3-5.

On the other hand, this rule also tries to compensate for the abolition of jurisdiction based on the domicile of the plaintiff when on 1 January 2002 specific rules of jurisdiction for cross-border disputes went into effect.⁶¹ Jurisdiction on this ground will therefore heavily depend on what the Dutch courts consider exorbitant in each specific case.

In writ of summons proceedings, the Dutch court may assume jurisdiction if the case is sufficiently connected to the Dutch legal system and if it is unacceptable to require the claimant to submit the case to a court of a foreign country for determination (art. 9(c) DCPC). This could apply, for example, in situations of war, natural disaster or discrimination such that specific parts of the population cannot be guaranteed due process.⁶² The term "unacceptable" is to be interpreted narrowly, partly to prevent this jurisdictional ground from being considered exorbitant.⁶³ The article 9(b) circumstances mentioned in the legislative historical documents do not differ essentially from those mentioned for article 9(c). There is some doubt about the added value of making this distinction.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

Dutch law has no exequatur procedure outside the applicability of a convention. So if no convention is applicable, a foreign decision cannot be enforced in the Netherlands. In such case new proceedings need to be commenced in which the recognition of the foreign decision can be sought. To decide on such recognition the original court needed, amongst other requirements, to have had internationally acceptable jurisdiction. Apart from the fact that there are no "exclusive" jurisdiction rules in the Netherlands as such, although some rules are exclusive by nature, there are no cases published in which recognition was denied because of a (semi) exclusive jurisdiction rule. On the other hand there are cases where recognition was refused because the foreign court lacked internationally acceptable jurisdiction.

⁶¹ See previous footnote.

⁶² Parl. Gesch. Herz. Rv, p. 593-595 (Advice State Counsel and Further Report), 115 -117 (MvT); Polak (2005), T&C Rv, art. 9, aant. 6; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 9 Rv, aant. 3-5.

⁶³ See previous footnote.

(E) Declining Jurisdiction

18. Forum Non Conveniens

Before the amendments to the new Dutch Civil Procedure Code came into force on 1 January 2002, the jurisdiction of the Dutch courts was universal in petition proceedings.⁶⁴ This system required a *forum non conveniens* rule, which was laid down in article 429c(15) of the Dutch Civil Procedure Code. The scope of this provision had gradually widened to include nearly all civil matters.

This development was halted when this system of universal jurisdiction and the rule of *forum non conveniens* was abandoned in 2002.⁶⁵ Under the amended Dutch Civil Procedure Code, jurisdiction only exists under the grounds provided for in part 1 of Book 1 of the Dutch Civil Procedure Code (articles 1-14).⁶⁶ It was expressly stated by Dutch lawmakers that it would no longer be possible for a court to decline to exercise jurisdiction where there was a statutory ground for the exercise of jurisdiction.

The way to deal with a case that in the view of the court should not be in the Dutch courts at all is through the application of substantive law principles. For example, the court may deny the claim because of lack of justiciability (*geen belang*).⁶⁷ However, the discretion of the court is probably much more curtailed than if the *forum non conveniens* principle had been applied.

A specific ground for declining jurisdiction is state immunity and the immunity of international organizations, as laid down in international law, in international treaties to which the Netherlands is a party, and in Dutch law under article 13a of the General Provisions Act (*Wet Algemene Bepalingen*).

The remaining grounds for declining jurisdiction, namely the choice of forum clause and *lis pendens* are discussed below under Question E(19)(a) and (b).

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

(a) Non-EU Jurisdiction Agreements

Article 8(2) of the Dutch Civil Procedure Code provides that the Dutch courts cannot exercise jurisdiction if there is a valid choice of forum clause in which jurisdiction is given exclusively to the court of a foreign state, provided the parties freely entered into the legal relationship.⁶⁸ Article 8(3) of the Dutch Civil Procedure Code provides that jurisdiction over consumer claims

⁶⁴ As opposed to a writ of summons.

⁶⁵ Except for the articles 4 sub 3 b and 5 Civil Procedure Code concerning specific family-law related matters.

⁶⁶ MvT, Parl. Gesch. Herz. Rv, p. 90.

⁶⁷ MvT, Parl. Gesch. Herz. Rv, p. 90 and art. 3:303 DCC.

⁶⁸ Examples of legal relationships not entered into freely are most family-law related legal relationships: MvT, Parl. Gesch. Herz. Rv, p. 111.

and employees cannot be contractually waived unless (a) the agreement was entered into after the conflict arose, or (b) it is the employee who is relying on the agreement as ground for the jurisdiction of the foreign court. (See Questions C(13)(a) and (b)). An agreement in writing is not required. The Dutch court has jurisdiction to assess the exclusive nature of the jurisdiction stated in the clause, something the court must be able to do to decide whether to decline to exercise jurisdiction. The law does not distinguish between courts of EU member states and other foreign courts, nor does it set minimal requirements for the fairness of the legal proceedings in those courts in view of possible recognition and enforcement.⁶⁹

(b) Parallel Proceedings in a non-EU court

Article 12 of the Dutch Civil Procedure Code provides that a Dutch court *may* stay the proceedings and ultimately decline jurisdiction if it is seized of proceedings and proceedings between the same parties involving the same cause of action is pending in a foreign court that may render a decision which is eligible for recognition or enforcement in the Netherlands.⁷⁰ If the Dutch court decides to stay the Dutch proceedings, and if the foreign court renders a decision which is eligible for recognition or enforcement in the Netherlands, the Dutch court must decline jurisdiction.⁷¹ Therefore, the requirements for the recognition and enforcement of foreign decisions play an important role. Recognition of foreign judgments under Dutch law is subject to certain conditions. The foreign court must have had jurisdiction by internationally accepted standards. The foreign proceedings must have complied with the standards of a fair trial. The foreign judgment must not be contrary to public order.⁷² Enforcement of foreign decisions in the Netherlands is dependent on the existence of an international treaty providing for the enforcement of such court decisions from particular state.⁷³ So if there is no treaty applicable between the foreign country and the Netherlands, the Dutch court will not be free to stay the proceedings.

The *prior tempore* rule applies. According to the Dutch lawmakers, the time when the case is considered to have commenced will be determined according to the law of the state where the court had been seized.⁷⁴ Contrary the procedure in petition proceedings, in writ of summons proceedings the court cannot apply article 12 of the Dutch Civil Procedure Code on its own motion. According to article 11 of the Dutch Civil Procedure Code, the defendant has to raise the defence at the first opportunity and no later.

(c) "Exclusive" Jurisdiction in a non-EU State

⁶⁹ Polak (2005), T&C Rv, art. 8, aant. 1-3; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 8 Rv, aant. 1-7.

⁷⁰ In this case art. 27 Brussels I Regulation would have applied if the courts seized had both been located in member states (ECJ-case C-351/89, *Jur.* 1991, p. I-3317, *Overseas Union Insurance Ltd. v. New Hampshire Insurance Company*)

⁷¹ Polak (2005), T&C Rv, art. 12, aant. 1-10; Vlas, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer, art. 12 Rv, aant. 1.

⁷² MvT, Parl. Gesch. Herz. Rv, p. 120.

⁷³ Art. 431, Dutch Civil Procedure Code.

⁷⁴ MvT, Parl. Gesch. Herz. Rv, p. 119.

Jurisdiction of the Dutch courts over cases involving immovable property located in the Netherlands is given by article 6(f) of the Dutch Civil Procedure Code. This jurisdiction is however not exclusive. There is no provision in Dutch law to the effect that Dutch courts cannot exercise jurisdiction over immovable property abroad. The Dutch Civil Procedure Code does not contain any provision declining jurisdiction on the grounds that foreign law gives exclusive jurisdiction to a foreign court. If the Dutch Civil Procedure Code provides a ground for jurisdiction, a Dutch court is not allowed to refuse to exercise jurisdiction.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

The difference between this question and the question above is in essence that in this question the defendant is domiciled in an EU state. This means that contrary to the premise above, the Brussels I Regulation applies.

Declining jurisdiction is not possible, however if the provisions of Dutch law conflict with each other (jurisdiction on one ground and the obligation to refer to another court on another ground because of a choice of forum) there is no rule for the approach the court should take.

If there is a treaty on enforcement of decisions in force with the non-EU country in which the non-EU court resides and the decision from that court is eligible for enforcement under that treaty, the Dutch court may stay proceedings on the grounds of article 12 DCPC. This is only relevant if the non-EU court was seized first compared to the Dutch court (see above).

a) Non-EU Choice of court clause

Article 23 of the Brussels I Regulation does not apply in this situation, since its application is restricted to the choice of a court in an EU state. Application of article 8 DCPC relating to the choice of forum clause could derogate from article 2 or article 6 of the Brussels I Regulation. In view of the *Owusu v. Jackson* decision, it is questionable whether this national provision can be applied, resulting in the decline of jurisdiction by the court located in an EU member state in favour of a court in a non-EU member state. There is no case law in the Netherlands on this conflict of jurisdictional rules.

b) Non-EU Parallel proceeding

Similarly, article 27 of the Brussels I Regulation does not apply, since *lis pendens* under the Regulation only occurs when there are two or more proceedings before the courts of EU Member States. It is questionable whether the national *lis pendens* provision (see Question E(19)(b)) applies as this would result in the decline of jurisdiction by the court of the Member State in derogation of article 2 or 6 of the Brussels I Regulation.

c) Non-EU Exclusive jurisdiction

Dutch courts may not decline jurisdiction on the ground that foreign law gives exclusive jurisdiction to a foreign court, see Question E(19)c.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

Some lower courts have assumed such jurisdiction under article 9(b) or (c) of the Dutch Civil Procedure Code (see C.16). The Supreme Court has so far not yet had the opportunity to decide on the matter.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

(a) Claims from EU Consumers against non-EU defendants

Regardless of the domicile of the professional, if a consumer is domiciled in the Netherlands and the claim concerns a specific consumer contract (see Question C(13)(a)(i)), the Dutch courts always have jurisdiction. Dutch courts have no discretion to refuse to exercise jurisdiction. No situation is known where this has happened. If a consumer is not domiciled in the Netherlands, there is no specific protection for the consumer. If the Dutch courts have jurisdiction under articles 2 and 6 to 14 of the Dutch Civil Procedure Code, they may not refuse for whatever reason to exercise the jurisdiction (see Question E(18)) and have not done so, according to the reported cases.

(b) Claims from EU Employees against non-Eu Employers

If an employee habitually works or has habitually worked in the Netherlands (or in specific cases temporarily works or has worked in the Netherlands (see C(13)(b)(i)), he or she can always avail himself of the jurisdiction of the Dutch courts even if he or she also works in other countries.

The courts have no discretion to refuse to exercise jurisdiction. (See Question E(18)). This also holds true if the Dutch court has jurisdiction according to any other ground of jurisdiction, such as tort. It will be difficult, if an employee is domiciled in the Netherlands during his or her employment contract or afterwards, and the work is performed or has been performed abroad, to find a ground for jurisdiction of the Dutch courts if the employer is domiciled abroad. Unless the claim can be qualified as a tort claim, or has a connection with one of the maritime jurisdictional employment grounds (see Question C(12)), a Dutch court only accepts jurisdiction if the employee shows that it would be impossible or unacceptable for him or her to go to a foreign court. (See Question C(16) where *forum necessitatis* is discussed.)

(c) Claims from EU Plaintiffs in Community Regulated Matters

If there is no jurisdiction under articles 1 to 14 of the Dutch Civil Procedure Code and the defendant argues that there is no jurisdiction, the Dutch court shall declare that it lacks jurisdiction to hear the claim.

If these articles do provide jurisdiction to the Dutch courts, the courts have no discretion to abstain from exercising it. (See Question E(18)). There are no reported cases in which this was not followed.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

No case-law is known where a Dutch national was not able to invoke the protection of community legislation because the person(s) involved was (were) no longer domiciled in the EU at the time the proceeding was instituted.

24. The Risk that EU Rules and Principles be Put in Jeopardy Because of the Application of National Jurisdictional Rules

No case-law is known where the application of domestic jurisdictional rules has led or is likely to lead to jeopardize the application of mandatory Community legislation or the proper functioning of the internal market or the adequate judicial protection of EU nationals and domiciliaries.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

The jurisdiction of the Dutch courts over matters of parental responsibility is laid down in articles 4 and 5 of the Dutch Civil Procedure Code. These provisions apply if and insofar as the following provisions do not apply - the Brussels II *bis* Regulation; the Hague Convention on Jurisdiction and the Applicable Law on Matters Relating to the Protection of Minors 1961; and the Hague Convention on Jurisdiction, the Applicable Law, the Recognition and Enforcement and Cooperation in the Field of Parental Responsibility and Measures for the Protection of Minors of 1996⁷⁵ (art 4 (1) of the Dutch Civil Procedure Code).

The general article applicable to petition proceedings (article 3 of the Dutch Civil Procedure Code) is not applicable to matters regarding parental responsibility. If the claim is related to separation or divorce proceedings of the parents, a Dutch court has jurisdiction over the provisional or ancillary decision (article 4(3) of the Dutch Civil Procedure Code) if it has jurisdiction for the separation or divorce proceedings (article 4 sub 2 Civil Procedure Code). However, in respect of ancillary decisions relating to parental responsibility (i.e. an application for a custody arrangement and right of parental access), a Dutch court will declare that it lacks jurisdiction if it considers itself, because of the limited connection of the suit to the Dutch legal system, not to be in a position to assess properly the best interests of the child.

There is another limitation if the child's place of habitual residence is not in the Netherlands. In such case, notwithstanding the foregoing, the Dutch court has no jurisdiction over suits relating to parental responsibility, except in an exceptional case in which, because of the connection of the case to the Dutch legal system, the court considers itself to be in a position to assess properly the best interests of the child (art. 5 DCPC).⁷⁶ So even if a child is not habitually resident in the Netherlands and none of the conventions are applicable, a Dutch court may exercise jurisdiction in exceptional circumstances.

In probably even more exceptional circumstances, the Dutch court may assume jurisdiction in matters of parental responsibility under article 9(b) of the Dutch Civil Procedure Code. If proceedings outside the Netherlands are impossible, the Dutch court will exercise jurisdiction. (See Question C(16)).

⁷⁵ This convention came into force in the Netherlands on 8 March 2006.

⁷⁶ This article 5 of the Dutch Civil Procedure Code came into force in its current text form on 1 May 2006.

ANNEX A

BIBLIOGRAPHY

Eckoldt, J.P., 'Heeft art. 629 Rv aan betekenis verloren? Het commune internationale bevoegdheidsrecht bij inkomend zeevervoer', *Nederlands Tijdschrift voor Handelsrecht*, 2005-2, p. 67-72

Ibili, F., *Gewogen rechtsmacht in het IPR. Over forum (non) conveniens en forum necessitatis* (diss. VU Amsterdam), Amsterdam, 2007

Koopmann, M.W.E., 2005, *Tekst&Commentaar Burgerlijke rechtsvordering*, Kluwer: Deventer

Koppenol-Laforce, M.E., 'Internationale rechtsmacht in rechtsvordering per 1 januari 2002 in werking', *Internationaal Privaatrecht, Juridisch up to Date*, 2002/4, p. 13-17

Koppenol-Laforce, M.E., *Kroniek van het internationaal privaatrecht*, NTBR aflevering 6 – juni 1998, p. 182-193

Kramer, X.E., *De regeling van de rechtsmacht onder de herziene Rechtsvordering*, NIPR, aflevering 4 – 2004, p. 375-385

Mierlo, A.I.M. van, *Groene Serie Burgerlijke Rechtsvordering*, Kluwer: Deventer, loose-leaf

Mierlo, A.I.M. van, (Ed.), *Parlementaire Geschiedenis Herziening van het Burgerlijk Procesrecht voor burgerlijke zaken, in het bijzonder de wijze van procederen in eerste aanleg*, Kluwer: Deventer 2002

Polak, M.V. en V. Van den Eeckhout, *Kroniek van het internationaal privaatrecht*, NJB, aflevering 10 – 10 maart 2000, p. 573-580

Polak, M.V. en V. Van den Eeckhout, *Kroniek van het internationaal privaatrecht*, NJB aflevering 10 – 9 maart 2001, p. 507-513

Polak, M.V., 2005, *Tekst&Commentaar Burgerlijke rechtsvordering*, Kluwer: Deventer

Rutgers, J.W., 'Internationale forumkeuze en agentuur: het commune bevoegdheidsrecht in Europees perspectief', NIPR, aflevering 4 – 2003, p. 351-355

Schmidt, G.E., *De EEX-Verordening: de volgende stap in het Europese procesrecht*, NIPR, aflevering 2 – 2001, p. 150-164

Steenhoff, G.J.W., 'De rechtsmachtregeling inzake vermogensrecht in het herziene Wetboek van Burgerlijke Rechtsvordering', *Executief 1/2002*, p. 4-6

Strikwerda, L., "Het forum necessitatis in verzoekschriftprocedures", in R.J.C. Flach e.a. (red.), *Amice: Rutgers-bundel. Opstellen, op 26 april 2005 aangeboden aan Prof. Mr. G.R. Rutgers ter gelegenheid van zijn afscheid van de Rijksuniversiteit Groningen*, Deventer: Kluwer 2005, p. 329-335

Vlas, P. en F. Ibili, *De nieuwe commune regels inzake de rechtsmacht van de Nederlandse rechter*, WPNR 03/6527, p. 310-319

Vlas, P., *Driesprong IPR: codificering, communautarisering en globalisering*, *Tijdschrift Ondernemingsrecht*, Aflevering 10 – 2005, p. 354-359

Vlas, P., *Groene Serie Burgerlijke Rechtsvordering*, Kluwer: Deventer, loose-leaf



26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

Convention concerning the powers of authorities and the law applicable in respect of the protection of infants, The Hague 1961. This convention is in force for the Netherlands since 20 July 1971.

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these "exclusive" rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

A foreign decision cannot be enforced without a convention between the country of origin of the decision and the Netherlands. In order to give a foreign decision effect in the Netherlands, one has to commence new main proceedings in the Netherlands. However, if the foreign decision can be recognized, the court will not go into a new assessment of the case. It will give a decision which is comparable to the foreign decision. A foreign decision shall be recognized if the jurisdiction of the foreign court was internationally

acceptable, rules of due process have not been violated and the recognition is not against the Dutch public policy. Some also require that the decision is final in the country of origin.

(H) Specific Country Questions

29. "Treaty system" for the Recognition of non-EU judgments

Is it correct that the recognition and enforcement of a non-EU judgments are subject in your country to a treaty basis?

The Netherlands indeed can only ENFORCE a foreign judgment if there is a treaty or regulation applicable between the Netherlands and that foreign country. However it is held in case law and literature that there is no prohibition on recognition of a foreign judgment. So if a party in any proceedings asks for the recognition of a foreign judgment, for instance to get to the result that the Dutch court will grant a decision with the same contents as the foreign decision, the Dutch court will check the requirements of whether the foreign court had internationally acceptable jurisdiction (usually there is some bench marking against jurisdictional grounds that have been accepted in treaties/regulations to which the Netherlands is a party), due process and not against Dutch public policy.

The question no. 17 is only about enforcement. Such is not possible in the Netherlands without a treaty/regulation. There is however that quasi-enforcement through the route of asking recognition of the foreign decision in court and simultaneously asking for a Dutch decision with the same contents as the foreign decision. In effect, it is a sort of enforcement.

As Dutch law has not exclusive jurisdictional grounds a breach of Dutch grounds of jurisdiction will not be a reason to deny recognition (enforcement will always be denied without a treaty). However it could be that there is no reasonable ground for jurisdiction for the foreign court (for instance no domicile defendant, place of tort, immovable situated there) and that at the same time the object of the claim is situated in the Netherlands. In such a case recognition may be denied because of lack of internationally acceptable jurisdiction.

*

* *