

transportlovgivning skal heves til Rotterdamreglenes nivå for så vidt gjelder nasjonale transporters.

1.4 Summary in English

The Maritime Law Commission recommends that Norway should ratify the Rotterdam Rules in order to secure and promote a uniform legal regulation of carriage of goods internationally. The Commission recommends that ratification takes place when USA or the larger EU States ratify.

The recommendation on ratification is also an approval of the rules of the Convention. The mandatory character of rules of this kind has, however, not been important to the Commission's evaluation of the rules.

The Commission does not recommend that Norway adopts the chapters of the Convention on jurisdiction and arbitration. The chapter on arbitration should be treated in the same way as the chapter on jurisdiction, and it is not likely that the EU States will adopt the chapter on jurisdiction. Norway should then not opt for a different solution than that of the EU States.

Instead, the Commission recommends that the current Scandinavian rules on jurisdiction and arbitration in the Maritime Code should be retained, with amendments inspired by the Rotterdam Rules. The Lugano Convention (and the corresponding EU Rules) will also in the future take precedence.

The Rules of the Convention are to be implemented in Chapter 13 of the Norwegian Maritime Code, but not necessarily in the same order as in the Convention itself. The individual articles will however be easily recognizable.

Rules of the existing Maritime Code that are not irreconcilable with the Convention are fit into this structure. This applies to rules such as the rules on freight on a *quantum meruit* basis if the carriage is not completed and some rules on the effect of breach of contract not covered by the Convention.

The relation between the Maritime Code Chapter 13 on carriage of goods and chapter 14 on chartering has been reviewed by the Commission. It is proposed that Chapter 14 hereinafter only shall deal with the relationship between the ship owner and the charterer, while all other relations should be dealt with in Chapter 13.

A special area of concern has been multimodal transports. The Rotterdam Rules regulate such transports, but only if they include an international sea voyage. It has then been important to

create clarity in relation to other transport conventions.

The recommendation of the Commission is that the transport conventions should be construed restrictively, in line with recent continental European cases, so that issues of contradictions or overlapping scopes do not arise. Hence, in relation to many contracts there will be no mandatory rules. The Commission considers this to be acceptable, in line with its policy view on mandatory rules. However, when no mandatory set of rules apply, one of the transport regimes should apply as gap-filling law, and it should primarily be for the commercial parties to clarify which one.

The Commission recommends that, as a starting point, one and only one set of rules should apply to any one transport. The same set of rules should also apply to subcarriers, to avoid the incentive for a claimant to sue the subcarrier in a direct action. The Rotterdam Rules only offer such protection of subcarriers in the maritime part of the transport.

The recommendations of the Commission in respect of multimodal transport have not been implemented in the proposed draft legislation, but are intended as recommendations contained in the *travaux préparatoires*. In Norwegian law, courts will usually follow such recommendations.

The Maritime Law Commission recommends that negotiable transport documents – bills of lading in today's terminology – shall only be negotiable in the sense that they are transferable. The rules on purchase in good faith are proposed to be abolished as redundant. This means that a pledge in a document cannot be executed by sole transfer of the document. The rules on cargo misdescription are not affected by this, but are on the contrary extended so that they will apply even to other types of documents than those to which the rules currently apply.

The reforms of the national rules on negotiability lead to uniformity in the legal framework for electronic transport records and paper documentation. The Commission also recommends that the word 'document' should be used in respect of electronic transport records. There is also a proposal for a legal basis to create statutory instruments on electronic signatures.

The Commission proposes that liability for misdescription of cargo in the Rotterdam Rules, which mimics the liability for cargo damage in the same way as section 299 of the current Maritime Code, should be supplemented by rules on liability for losses incurred by relying on the correctness of descriptions of the document (cf. section

300 of the current Maritime Code). Such liability is, as a starting point, subject to limitation under the Rotterdam Rules, as correct cargo description is a duty under the Convention. However, the Commission proposes a separate duty for the carrier to prevent losses from occurring in this context. Breaches of this duty will not be subject to the limitation of liability under the Convention.

The Rotterdam Rules do not include provisions that the transport should be planned and carried out with a view to reducing emission of greenhouse gasses. The Commission proposes a rule of interpretation in this respect, and also a rule to the effect that slow steaming for environmental reasons as a starting point should be allowed.

Even if the Rotterdam Rules do not allow reservations, there are in a few cases openings for national variations in the implementation of the rules. The Maritime Law Commission has, *i.a.*, recommended:

- The rule in Article 12(3) that the carrier can be exempted from liability for the first and the last terminal period should not be implemented in national law, in line with clear statements in the *travaux préparatoires* of the Convention that national law could be more restrictive than the Convention in this way.
- Section 285 of the current Maritime Code, which provides that the carrier – on certain conditions – can be exempted from liability in

respect of certain legs of the transport, should be retained as far as the first and the last leg of the transport is concerned. Likewise, this has a basis in clear statements in the *travaux préparatoires*.

- A special, national, limitation regime in favor of the shipper is not to be established, albeit the Convention apparently would allow such national rules.
- The rules on time limitation of actions of the Convention should be supplemented by the Limitation of Claims Act where appropriate.

In line with the current legislation the proposal is that the international rules shall be applied also to domestic transports. The Commission proposes that the system of uniform limits of liability for domestic transports should be maintained. This means that a special limit of liability of 19 SDRs pr. kg. should continue to apply to cargo damage in domestic transports, while the Rotterdam Rules as implemented in the Maritime Code shall otherwise apply. In respect of the limit of liability for delay, the limit of the Rotterdam Rules is higher than those applying to other modes of transport. Hence, special rules for domestic transports are not required in the Maritime Code. It is proposed that the limits of liability for delay in other modes of transport shall be increased to the level of the Rotterdam Rules as far as domestic transports are concerned.