

Legal experts urge Brussels to redraft Rotterdam Rules

Tuesday 11 October 2011

AN INTERNATIONAL group of professors and legal practitioners opposed to the Rotterdam Rules has called on the European Union to insist on a redrafting of the yet-to-be-ratified cargo liability convention.

A letter from the group to EU Transport Commissioner Siim Kallas states that "only" 24 countries have signed and just one has ratified the Rotterdam Rules, which were launched with a flourish in the Dutch port bearing its name in September 2009. The Rotterdam Rules need 20 countries to ratify, at which point it will enter into force 12 months thereafter.

In the letter, the group says: "Historically, it is the case that many countries that sign up to conventions never move to ratify, so it is fair to say that there is a strong prospect that these Rules may never come into force."

The idea of a cargo liability regime fit for global supply chains was originally proposed by the Comité Maritime International, a body that seeks the unification of maritime law.

The proposal was then taken under the wing of the UN Commission on International Trade Law in a decade of consultation and compromise agreement which eventually led to the publication of the Rotterdam Rules, with legal opinion still divided around the world.

The group behind the letter is comprised of law professors and legal practitioners specialising in the field of transport law from countries including Australia, Canada, the Czech Republic, Spain, Sweden, the UK, and Uruguay.

Their joint letter continues: "Looking at the regional position with regard to signatories, there are 11 African countries, 10 European countries — two of which are non-EU — the US, Armenia and Madagascar.

"This leaves much of the trading world unrepresented in this list. Why have the rules not gained the worldwide support that CMI and Uncitral hoped for? Why has this attempt to bring back uniformity to carriage of goods by sea law not caught the interest of the worldwide trading community?"

"Is it because of the complexity or the drafting issues or is it simply because many countries are happy with the legal rules they have in place to deal with sea carriage and other types of carriage and have no interest in the introduction of an entirely new system that deals with sea carriage and only half deals with other modes by way of what has become termed as the 'maritime plus' regime adopted by the Rules?"

"It does seem that after the initial confidence of the signing ceremony interest has fallen flat."

Michael Sturley, of the University of Texas Law School, was one of the key US delegates who helped draft the Rotterdam Rules. He cautioned against a conclusion that the Rotterdam Rules would not be ratified, based only on a two-year period since the signing ceremony.

"What is remarkable is that Spain was able to ratify so quickly. In the US, for example, the government remains committed to ratification and is moving in that direction, but ratifying a treaty is a major decision and the process requires considerable time," he said.

"Just look at how long it has taken to bring other comparable treaties into force. The Hague Rules were a much simpler treaty in a much simpler time, and it still took half a dozen years to bring them into force, and a dozen years in

the US. The Hamburg Rules are also much simpler and if memory serves it took over a dozen years to bring them into force.”

Sign up to the FREE Lloyd's List Daily News Bulletin at <http://www.lloydslist.com/ll/email-alert.htm>

Articles remain the copyright of Informa UK Limited

Please note that incorrectly addressed emails are returned to a Lloyd's List bulletin board and that copies may be taken for administrative purposes