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**PYSDENS OCTOBER 2011: WILL EUROPEAN UNION TAKE UP THE
“ROTTERDAM RULES” CHALLENGE?**

The Rotterdam Rules have now been open for signing for over two years, the signing ceremony having taken place on 23 September 2009. Only 24 countries have signed and 1 has ratified. 21 signed at the signing ceremony or up to just over a month after and since then, two countries signed in late 2010 about a year later and one in mid 2011. 20 ratifications are required to give the Rules the force of law. 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.

Looking at the regional position with regard to signatories, there are 11 African countries, 10 European countries (two of which are non EU), The United States of America, 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.

The two main areas of contention when the Rules first came to be discussed on the world stage following the drafting process undertaken by CMI were inevitably applicable limitations and the ability to contract out (the Volume contract exemption) and the extent of application of the Rules. It was felt that transport and logistics had developed so far that the Rules needed to be multimodal rather than simply port to port, but how far should the Rules extend? Initially the Rules were intended to bring in a full network liability regime including the application of National Law. Interestingly, from the time of the last meeting of the drafting group in CMI to the first meeting of the Uncitral working group, this intention changed from being fully set out in the draft on an open basis to being partly square bracketed meaning it was under query – that part related to the application of National Law. By the end of the Uncitral Working Group process, the full network liability principle had been shelved and instead, the maritime plus regime had been brought in to the draft. The volume contract exemption is a worrying part of the Rules given the intention to bring back uniformity to carriage of goods by sea law as this allows parties

whom one would expect to be caught by the Rules to contract out and agree whatever they want to agree.

A group of professors and legal practitioners specialising in the field of transport and logistics (with representatives from Europe; South America; Australasia and North America) have published three papers relating to the Rules and the problems with the same. In the Group's latest paper there was a call for Uncitral/CMI to effect a redraft but as this call has not been responded to, the group is now calling on the EU Transport Commissioner, Siim Kallas, to take up the challenge, which the Group said would be the next step if Uncitral/CMI took no action. The group has also challenged the EU to take up a firm stance against the Rules requiring member states not to sign or ratify. If the EU were to do this, there would currently not be enough countries left on the list of signatories to gain ratification even if they all signed.

Why is the Group so keen to see a redraft? It is plain from their papers that the main contentions raised are the potentially damaging introduction of the volume contract exemption and the limited attempt by the Rules to deal with multimodal transport. If you wish to read the full text of the email sent to Mr. Kallas last week, and if you wish to view the papers to see the Group's full comments on the Rules, go to <http://www.pysdens.com/v2/letters.asp> and click on one of the four options appearing below the listed names of the Group Members. Stand by for further news on this subject.

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