The Response of National Law to International Conventions and Community Instruments – the Dutch Example

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Abstract

This paper, presented at a colloquium at Barcelona University in 2010, outlines the history of the codification of Private International Law (PIL) in the Netherlands, which was completed in 2011 by the introduction of Book 10 of the Dutch Civil Code (conflict of laws). It describes the policy guidelines followed in giving effect to international instruments, i.e. conventions and European legislation. Basically all types of international PIL rules are further regulated at the national level. Moreover, the national PIL codification contains a number of provisions which were borrowed from or inspired by international instruments.

Keywords: Legislative approaches, Private International Law codification, Book 10 of the Dutch Civil Code, Implementation of international instruments, Incorporation by reference.

A. Introduction

On 14 and 15 October 2010, the Law Faculty of Barcelona University organized a colloquium in honour of Professor Ramon Viñas Farré. The theme of the colloquium was the adjustment of internal legislation to Community instruments in the field of civil co-operation. The topics discussed included the approaches taken in the Netherlands towards the implementation of international conventions and Community instruments and towards the codification of Private International Law (PIL) at the national level.

B. Definitions and Levels of PIL Regulation

The subject matter of this presentation is PIL. In the Netherlands that notion basically comprises three elements: jurisdiction, applicable law and recognition and enforcement. It does not include nationality law. In the second half of the 20th century, a fourth element was added, *i.e.* provisions intended to comply with obligations under instruments on international co-operation, both administrative and judicial. In view of this delimitation of the subject, one would expect to find

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all those elements, or at least three of them, in every piece of Dutch PIL legislation. But this is not the case.

This article concerns mainly the implementation of international PIL instruments in the Dutch legal order. Of course, under European law, EU Member States are not allowed to transpose texts of European Regulations in national statutes. However, the term 'implementation' is used here in a more general sense. It designates the way in which international conventions and Community instruments are incorporated in the Dutch legal order and the way in which statutory provisions can be introduced in order to assist their application and complete them where necessary.

A characteristic of most PIL systems in Europe is the existence of two levels of PIL regulation. The top level is that of multilateral conventions and Community law. For purposes of implementation, the two types of international instrument can be put on the same footing. Where this article refers to 'international instruments', it refers to either type of instrument. In the Netherlands, the precedence of treaty law over national legislation follows from the Constitution. For European Regulations, it follows directly from Community law.

The second level of PIL regulation is national. At the national level, a distinction can be made between rules intended to give effect to international instruments, on the one hand, and purely national rules, on the other. The purely national rules deal with subjects that are not, or not yet, covered by international legislation. Such a distinction also exists within national Spanish PIL, but only to a very limited extent.[1] In the Netherlands, in the last thirty years, the two types of national legislation have developed hand in hand with the incorporation of international rules. They are often combined in a single implementing statute. Some of the legislative techniques that were used in drafting the Dutch PIL codification will be outlined in paragraphs D and E. Paragraph C describes how the codification came into being.

C. Historical Overview

I. International PIL

In the last decade of the 19th century and the years preceding World War I, the Netherlands was in the forefront of the development of International Law in general and of Private International Law in particular. A first international conference on PIL took place at The Hague in 1893 on the initiative of a renowned Dutch scholar, Tobias Asser. Following this successful exercise, it was decided to set up a regular advisory body for the Dutch Government, pending the institution of an international organization whose mission it would be to unify PIL through conferences and other means. The advisory body, which was chaired by Asser, was called Government Standing Committee on PIL. Half a century later, in 1955,

1 *See, e.g.*, C. Benicke, 'Die Neuregelung des internationalen Adoptionsrechts in Spanien', 30 *IPRax* 2010, pp. 473-481. *See also* F. Garau, 'La tardía (y problemática) adaptación del ordenamiento español a los Reglamentos (CE) Núm. 2201/2003 y Num. 805/2004', *REDI*, Vol. LVIII, No. I, 2006, pp. 605-611.

when the Hague Conference was finally given the status of an international organization by a treaty, the Standing Committee became the steering body of the Conference.[2] In 2007 that treaty was revised so as to admit the European Community to full membership. On that occasion, the Standing Committee lost its function as a steering body but kept its role as an advisory body of both the Hague Conference and the Dutch Government. Its involvement in national PIL issues remained unchanged. It should be stressed that without the input and the lasting support of this Committee the codification of PIL in the Netherlands would never have got off the ground.

In the years preceding 1914, six conventions saw the light: five on family law and one on procedural law.[3] These old treaties were ratified by the Netherlands and a number of other European countries. Two of them were ratified by Spain. These conventions provided the model for later efforts to produce uniform PIL in Europe and elsewhere.

The interwar period was a period of stagnation. Only after World War II the Hague Conference's activities received a new impetus and a period of very significant growth followed, both in membership of the Conference and in the number of conventions. The Netherlands was again deeply involved in developments at the multilateral level. Spain became a Member State of the Hague Conference in 1955 and has taken an active part in negotiations ever since.

II. National PIL

1. Initial Attempts to Achieve a Codification

The history of *national* Dutch PIL only partly coincides with that of international PIL. No national rules on PIL were laid down in legislation in the Netherlands until after 1945. Asser was firmly opposed to any attempt to do so. He preferred to leave matters to case law and the doctrine, hoping that international consensus could thus be reached.

In 1947, The Standing Committee's advice was requested on the introductory chapter of a draft Civil Code, containing about 30 articles on conflict of laws prepared by the late Professor E.M. Meijers. Meijers had been commissioned by the Government to draft a complete new Civil Code. The chapter on conflict of laws was assessed by the Standing Committee but was never published. It was superseded by an attempt, also initiated by Meijers, to achieve a trilateral treaty on PIL among Benelux countries. Negotiations on this treaty (also known as Uniform Benelux Law) took as long as 25 years. They finally failed in 1976.

2 The history of the Dutch Standing Government Committee is described in more detail by G.J.W. Steenhoff, *Honderd jaar Staatscommissie voor het internationaal privaatrecht*, 1997. *See also* Celebration of the Centenary of the Hague Conference on Private International Law 19, May 1993, edited by the Permanent Bureau of the Conference, 1993.

3 1902 Marriage Convention, 1902 Divorce Convention, 1902 Guardianship Convention, 1905 Civil Procedure Convention, 1905 Effects of Marriage Convention, 1905 Deprivation of Civil Rights Convention. The texts and the status charts of these conventions can be found on the website of the Hague Conference, <www.hcch.net> under 'old conventions'.

That failure was, in fact, the starting point for fresh efforts to develop a national codification. The first step was to denounce the old Hague conventions on family law, mainly because of the problems that had arisen in the use of nationality as a connecting factor.

2. The Step-by-Step Method

An initial comprehensive draft for a Code on PIL, including provisions on jurisdiction, applicable law and recognition and enforcement, was submitted by the Ministry of Justice to the Standing Committee in the early 1980s. This unofficial draft subsequently served as a working paper for the Committee. It was agreed between the Standing Committee and the Government that Bills on the various subjects would be prepared separately, one after the other. At the end of the exercise, the separate Acts would be merged into one single Act and there would be further consultation on the need, if any, to insert an introductory chapter containing general provisions. This working method, which as far as I can see is unique in the world, was retained until the completion of the drafting in 2009. There were several reasons for adopting a step-by-step method. In fact, it was preferred first to gain experience with the practical operation of legislation in selected areas and see if legislation was at all helpful. The need for a national codification had indeed been questioned by some authors. Another important reason was that the step-by-step method leaves room for the incorporation of new international instruments. The Dutch Government's policy has always been to accept multilateral instruments – in particular, but not only, conventions of the Hague Conference – to the largest possible extent.

3. Scope of the Project

As the national codification project went on, there was a parallel development that was decisive for its scope. In the early 1990s, preparations had started for a revision of the Dutch Code of Civil Procedure. The draft for that Code included an introductory chapter containing general rules on jurisdiction. This new Code entered into force in 2001. After this stage had been reached, it was preferred not to remove the chapter on jurisdiction from the Code of Civil Procedure but rather to add a Book on the conflict of laws to the Civil Code. Thus, instead of the Swiss model, which is regarded by many as the ideal model, the German model was followed.

In the scheme chosen, the borderline between rules of jurisdiction and recognition and enforcement, on the one hand, and conflict of laws rules, on the other, is not as strict as one might think. This can be partly explained by the references to conventions dealing with both aspects. Moreover, some of the existing statutes on conflict of laws issues also contain some provisions on the recognition of legal acts and legal facts.

Twenty pieces of national legislation on conflict of laws issues came into force in the period between 1980 and 2010. Twenty international instruments were incorporated in that legislation. In addition, 11 statutes concerning the application of purely procedural instruments are currently in force.

4. General Provisions and Consolidation

Consultations on a set of general provisions started in 1997 and took until 2002.[4]

The actual consolidation of existing legislation on conflict of laws started after 2004 and consisted in carefully reviewing the existing provisions in the light of the proposed general provisions and where appropriate, reassessing the need for certain general provisions. It also included the removal of inconsistencies and testing the legislation in the light of case law and legal practice. The outcome was that no sweeping changes were required, except as regards divorce. The operation was, therefore, of a highly technical nature. The draft was once again submitted to the Standing Committee before it was laid before parliament. The Bill providing for the establishment of Book 10 of the Civil Code was adopted by the Second Chamber at the end of September 2010 after a very short oral debate. It passed the Senate without an oral discussion on 17 May 2011. Book 10 has entered into force on 1 January 2012.

Book 10 does not address all issues of PIL that are considered worthwhile. Further pieces of legislation can be inserted. For example, a subtitle has been reserved for the forthcoming ratification by the Netherlands of the 2001 Hague Convention on the international protection of adults. Existing titles may also be amended in order to take new international instruments on board. Thus, the subtitle on maintenance obligations was changed so as to refer to the new 2007 Hague Protocol on the law applicable to maintenance obligations.

The main body of the statute contains 165 articles. The order of the subjects is the same as the order of corresponding parts of the Dutch Civil Code dealing with substantive law.[5]

The aim of the Dutch codification, as it is taking shape, is to facilitate the access to and understanding of PIL for practitioners. There is no contradiction between the effort to codify PIL at the national level and the development of Community law and multilateral instruments in this field. On the contrary, the national codification is regarded as an indispensable complement to European and multilateral instruments in force. More generally, it can be said that an up-

4 A Spanish translation and a summary written by S.J. Schaafsma of the Standing Committee's report on the general provisions can be found in *REDI*, 2004, p. 2.

5 The 15 titles are the following: (1) General provisions; (2) The name of natural persons; (3) Marriage, with subtitles on the celebration and recognition of marriages; legal relationships between the spouses; the matrimonial property regime; the dissolution of marriage and separation; (4) Registered partnership (with subtitles corresponding to the subtitles of the title on marriage); (5) Filiation; (6) Adoption; (7) Other issues of family law, including subtitles on parental responsibility and child protection, international child abduction, maintenance obligations; (8) Corporations; (9) Agency; (10) Property law; (11) Trust law; (12) Succession to estates; (13) Contractual obligations; (14) Non-contractual obligations; (15) Some provisions on the conflict of laws relating to maritime, inland water and air transport.

to-date PIL code is helpful when it comes to ensuring coherence between rules from national and European and international sources.[6]

D. Incorporation and Implementation

I. The Legislature's Tasks

What are the tasks of the Dutch legislature as concerns incorporation and implementation of international instruments?

In an opinion delivered in 2002 for the Dutch Branch of ILA, M.V. Polak described the duties of the Dutch legislature in implementing international instruments. That opinion bore the title 'Take care, fit in and adjust'.[7] In Polak's view, 'taking care' means that right from the start of international negotiations, the Netherlands should be represented by officials from the Ministry of Justice who are experts on the subject matter and who should be seconded at home by experts from universities and by practitioners. Throughout the negotiations the quality of international legislation should be a primordial concern.

'Taking care' includes an early reflection on the goals that must or can be attained in the Dutch legal order with a new international instrument, taking into account the time available until its entry into force. Therefore, 'taking care' also means observing deadlines. It furthermore includes an assessment of the extent to which the legislature is free to interpret an instrument.

'Fitting in' is the legislature's task, which consists in giving effect to an international instrument in such a way as to comply with the country's obligations under public international law or Community law. This operation may include filling gaps in national law or waiving rules of national law that are inconsistent with the new instrument.

A Bill proposing parliamentary approval is a prerequisite for the reception of PIL treaties in the national legal order of the Netherlands. Depending on the implications of ratification, such parliamentary approval may be explicit or tacit. In the latter case there is, in principle, no exchange of views in parliament. By contrast, the coming into force of European Regulations, once adopted, does not require any action on the part of the government or parliament.

Usually, however, a separate implementing statute has to be enacted as well, containing provisions that are necessary to make the instrument operative. As explained earlier, in this regard there is no difference between international conventions and Community instruments.

6 For more details on the history and principles underlying the codification, *see* K. Boele-Woelki & D. van Iterson, 'The Dutch Private International Law Codification: Principles, Objectives and Opportunities', *Netherlands Reports to the Eighteenth International Congress of Comparative Law*, Washington, 2010. *See also* P. Vlas, 'On the Development of Private International Law in the Netherlands: From *Asser's* Days to the Codification of Dutch Private International Law (1910–2010)', 57 *NILR* 2010, pp. 167-182; A.V.M. Struycken, 'Boek 10 BW – een grote stap in de codificatie van het internationaal privaatrecht', Vermogensrechtelijke Analyses, 2011 (8)2.

7 M.V. Polak, Oppassen – Inpassen – Aanpassen, Taken en bevoegdheden van wetgever en rechter bij de receptie van internationaal en communautair IPR in de Nederlandse rechtsorde, Mededelingen van de Nederlandse Vereniging voor Internationaal Recht, November 2002.

European directives always require national legislation in order to be effective at the national level. This is what Polak designates as 'adjusting' national legislation.

II. Incorporation of International Instruments by Reference

Even though the precedence of treaty law over national law follows directly from the Dutch Constitution, and the precedence of European Regulations, from Community law, instruments on PIL are usually incorporated in Dutch national legislation by an explicit reference to the title of the instrument or instruments concerned. In the case of instruments on jurisdiction, a generic reference was inserted in Section 1 of the Code of Civil Procedure. Most instruments on conflict of laws are referred to specifically. There is one example of a convention that had to be referred to expressly in order to become part of the legal order. It is the 1989 Hague Convention on the Law applicable to Succession to the Estates of Deceased Persons. That Convention, regrettably, never entered into force. The Netherlands remained the only state party to it.[8] In future, this reference may be replaced by a reference to the European Regulation on succession law, which is being prepared at Brussels.

III. Exceptions to the Principle of Incorporation by Reference

There are a few exceptions to the system which consists in only making a reference to an international instrument without copying its text in a statute. They are about subject matters that are primarily dealt with by civil registrars. Civil registrars are keen to have precise instructions. The conclusion and the recognition of international marriages are, in the Netherlands, governed by the 1978 Hague Marriage Convention. The Convention's rules required an important complement in the national sphere. For the sake of clarity, a number of provisions of the Convention were reproduced in the Act implementing the Convention and combined with the necessary national provisions. The same happened with the 1980 ICCS Convention on the law applicable to Surnames and Forenames, a Convention to which Spain is a party as well. The rules of that Convention were complemented by provisions dealing *inter alia* with cases of dual nationality.

It should be borne in mind that copying provisions from a convention entails the risk that the reader neglects the international origin of such provisions and that national standards are used in interpreting them. However, in the two areas just mentioned, the ease of handling the rules was considered to be decisive.

Dutch legislation on the *conflict of laws and the recognition of divorces* came into force in 1981. It incorporates two conventions on the recognition of divorces: the 1967 ICCS Convention on the recognition of decisions relating to the matrimonial bond and the 1970 Hague Convention on the Recognition of Divorces and legal separations. Both conventions allow a state party to apply rules that are more favourable to the recognition of divorce decrees than the conven-

8 A note on this Convention and its introduction in the Netherlands was published by A. Borrás Rodríguez in *REDI* 1996, p. 2.

tions' rules. Accordingly, the relevant chapter of the codification does not simply refer to the conventions but provides for a national set of rules on recognition, which are more liberal than those of the two conventions mentioned. These rules are even more liberal than Brussels II bis, which obviously takes precedence over the national regime as far as divorces pronounced in EU Member States are concerned.

The examples given show that the borderline between incorporation and implementation is somewhat blurred.

IV. Implementation of International Instruments

Basically all types of international PIL rules may need further regulation at the national level. There are rules implementing cross-border co-operation between authorities, conflict of laws rules and rules on procedural matters (jurisdiction, recognition and enforcement; also notification and the taking of evidence). All these elements may need implementation. In this paragraph, a few common features will be outlined.

Apart from containing a direct reference to the title of the instrument concerned, national legislation usually reproduces any declarations or reservations to be made on the occasion of the ratification or pursuant to a European regulation. In the case of treaty law, this allows parliamentary scrutiny before such declarations are made. Moreover, it makes it unnecessary for practitioners to consult websites in order to find out what the declarations are.

1. Procedural Matters

A statute implementing an instrument on procedural matters may, for example, specify languages in which a request may be made or channels through which a request has to be conveyed. It may state the type of proceeding to be used for certain purposes (summons or petition) or the court or section to be seized within a court (*e.g.* the Children's judge or the Judge in summary proceedings). It often waives certain provisions of the Code of Civil Procedure that are deemed to be inadequate for the purposes of applying the instrument, and/or replaces these by other provisions. It may, on the other hand, also provide for application, by analogy, of certain national provisions that would not be applicable otherwise. Where an instrument introduces a completely new procedure, *e.g.* the Regulation on uncontested claims, the implementing statute is detailed and is in fact a kind of operating manual with minute instructions. This allows citizens to save time and money.

2. International Administrative Co-operation

Special care is required in implementing provisions on administrative co-operation. An important question is how to position a central authority. In the Netherlands, this issue was and is much debated. Of course, the responsibility for the proper operation of an international instrument is, in the end, always a government responsibility. So an obvious solution is to designate a minister, most probably the Minister of Justice, as the central authority. Questions raised by the national parliament will have to be answered by him anyway. Now in the Nether-

lands, there is a growing tendency not to locate central authorities within the Ministry of Justice because care of the operation of conventions is no longer considered to be a core task of that ministry. As a result, certain central authorities are now located at the level of the Council for the Judiciary, which is completely independent from the ministry, and others in administrative bodies distinct from the ministry. These, too, are functioning in an autonomous way. The danger of this approach is that the minister does not have full control of the practical policies pursued and sometimes cannot react adequately and promptly to criticism. Efforts to concentrate central authorities in one division within the Ministry of Justice have remained unsuccessful. This is a matter for regret.

A very early example of a statute regulating powers and tasks of a central authority is the Act implementing the 1956 New York Convention on the Recovery Abroad of Maintenance. This statute mainly designates a central authority dealing with incoming and outgoing requests and lays down its powers and duties. Among its powers are the power to trace a maintenance debtor and his assets, using public registers and calling on the assistance of other bodies, such as the public prosecutor, and the power to represent the foreign creditor in court and act on his behalf when it comes to enforcing a foreign maintenance order. This Act is, in a way, an implementation of the Maintenance Regulation *avant la lettre*. It was a model for legislation which was later enacted in order to implement the 1980 Hague Child Abduction Convention, the 1993 Hague Adoption Convention, the 1996 Child Protection Convention and the Brussels II bis Regulation. Insofar as these instruments also provide for recognition and enforcement, those elements are addressed in the implementing provisions for each instrument. An effort was made to introduce cheap and expeditious procedures, for example by setting time limits. But implementing statutes may also serve to introduce extra safeguards. One example is the Dutch legislation implementing the 1993 Hague Adoption Convention.

3. Conflict of Laws

What needs to be done at the national level in order to implement instruments containing conflict of laws rules? Usually national legislation is enacted in order to fill the gaps that were left by the instruments *ratione materiae*. The 1978 Hague Marriage Convention, which incompletely regulates the conflict of laws on the conclusion of marriages, is one example. Another example is the Rome II Regulation. In the Netherlands that Regulation replaced a fairly recent statute on conflict of laws relating to tort which took a different approach, as that statute used the *lex loci delicti* as a connecting factor and not the *lex loci damni*. For practical purposes, in the chapter on non-contractual obligations in the future Book 10 of the Civil Code a provision was inserted to the effect that the rules of the Regulation will apply *mutatis mutandis* to cases that are not within the material scope of the Regulation. And there are more examples of this kind.

4. The Statute Implementing Brussels II bis and the 1996 Hague Child Protection Convention

The Dutch Act concerning the application of both the Brussels II bis Regulation and the 1996 Hague Child Protection Convention deserves particular attention. Spain and many other EU Member States ratified the 1996 Convention in 2010. The Netherlands did so in January 2011. The Convention is now in force in most Member States. In the Netherlands, when Brussels II bis was completed in 2003, it was thought appropriate, pending the entry into force of the Convention, to prepare a single statute implementing the two instruments. Inevitably that statute contains differing regimes for the recognition and enforcement of decisions under the two instruments. Nevertheless, a maximum of parallelism was achieved by declaring a number of procedural provisions of Brussels II bis applicable in Convention cases while inserting complementary provisions that are identical for the two instruments. The provisions on the central authority's powers and duties are practically the same for both instruments. A specific set of provisions elaborates the administrative co-operation in respect of foster placement. For this part of the statute, inspiration was drawn from the legislation implementing the 1993 Hague Adoption Convention.

The Act also contains a chapter on international judicial communication and co-operation. This follows from discussions held within the Hague Conference on judicial co-operation and the creation of a network of liaison judges.[9] Pursuant to this chapter the President of the Family Chamber of the Hague District Court and his or her deputy were appointed liaison judges for the Netherlands. By the same decision, a special Bureau was set up within the Hague court administration. This Bureau has a budget of its own and can, for example, provide translation services where necessary. The Bureau has become a focal point for advice and assistance in international family law cases, both for courts abroad and for courts elsewhere in the Netherlands. Transfers of cases pursuant to Article 15 of the Regulation or Article 8 or 9 of the Convention have to be effected through this Bureau.

E. Other Forms of Adaptation of Dutch National Law to International Instruments – the General Provisions and Certain National Provisions

Implementing statutes are only part of the response of Dutch national law to international instruments. There are other elements as well. As stated earlier, the introductory chapter of Book 10 of the Civil Code contains a number of general provisions.[10] Obviously, Conventions and Community Regulations take precedence over those general provisions. Section 1 of Book 10 reminds the reader of this. Moreover, the general provisions apply only to the extent that the provisions on specific issues do not depart from them. However, a significant number of general provisions were borrowed or even copied from international instruments. Not surprisingly, there is a general public policy clause, which is very simi-

9 *See The Judges' Newsletter*, Vol. XV, Autumn 2009, to be consulted at the website of the Hague Conference of International Law, <www.hcch.net>.

10 An English translation of that chapter is appended to this contribution.

lar to that of most existing international instruments. There is a provision on overriding mandatory laws, the wording of which was adjusted to the new Rome 1 Regulation. Another provision excludes *renvoi* in the same way as most international instruments on conflict of laws. The provision on the express nature of the choice of an applicable law was, again, inspired by Rome 1 and its predecessor. The same applies to the formal validity of legal acts and to the Lizardi rule.

Certain rules on specific matters that are not covered by international instruments have themselves been strongly influenced by internationally accepted solutions. For example, Book 10 contains a chapter on registered partnerships which, as far as possible, follows the rules on marriage and the various effects of marriage. Another example: Article 15, second paragraph of the 1978 Hague Convention on the Law applicable to Matrimonial Property Regimes, lays down that the provisions on common nationality of the spouses do not apply where the spouses have more than one common nationality. This solution was adopted in chapters where the connecting factor is the common nationality of the parties concerned.

F. Recommendations

What lessons can be drawn from the experience in the Netherlands in this particular field?

The codification of PIL should be regarded as an *overall* exercise. There are no fundamental differences in the legislative techniques to be used at the international level and the national level. A national codification should enhance the coherence of approaches at both levels. Coherence does not mean that the approaches should necessarily be identical in all fields.

The step-by-step-method adopted in the Netherlands has proven successful and very helpful in achieving consensus on the Dutch Bill for a consolidated Act.

A government that takes PIL seriously should set up and avail itself of the services of an official advisory body whose opinions reflect the state of the art in the country. Such a body should be able to respond quickly and adequately to any question raised in connection with legislative activities. It should be offered all the facilities enabling it to have a comprehensive view of what is happening on the international scene. The advisory body should be composed not only of representatives of the academic world but also of practicing lawyers, judges, notaries, officers of the public prosecutor or other practitioners. Whenever necessary, the body should be free to call on outside experts, *e.g.* experts in financial operations or maritime law.

It is never too late to develop a national PIL codification.

Annex: Book 10 of the Dutch Civil Code – Private International Law

Title 1 – General Provisions

Section 1

The rules of private international law contained in this Book and in other statutes shall not prejudice the effect of international and Community legislation that is binding on the Netherlands.

Section 2

The rules of private international law and the law designated by those rules shall be applied *ex officio*.

Section 3

Dutch law shall apply to matters of procedure before Dutch courts.

Section 4

Where the question whether legal consequences ensue from a fact arises as a preliminary question in connection with another question that is subject to foreign law, the preliminary question shall be regarded as an autonomous question.

Section 5

Application of the law of a state means application of the rules of law that are in force in that state other than its rules of private international law.

Section 6

Foreign law shall not be applied to the extent that such application is manifestly incompatible with public policy.

Section 7

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a state for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable.
2. The law designated by a rule on the conflict of laws shall not be applied in so far as rules of overriding mandatory Dutch law apply to the case at hand.
3. Where the law designated by a rule on the conflict of laws is applied, effect may be given to overriding mandatory rules of the law of a foreign state with which the case has a close connection. In deciding whether to give effect to such overriding mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

Section 8

1. The law designated by a statutory rule based on the presumption of a close connection with that law shall exceptionally not be applied if – having regard to all circumstances of the case – the close connection assumed in that rule

manifestly exists only to a very small degree and a far closer connection exists with a different law. In such a case, that other law shall be applied.

2. Subsection 1 shall not apply where the parties make a valid choice of the applicable law.

Section 9

Where legal consequences ensue from a fact under the law that is applicable according to private international law of a concerned foreign state, the same legal consequences may be attached to that fact in the Netherlands – even where this would depart from the law that is applicable according to Dutch private international law – to the extent that failure to attach such legal consequences would constitute an unacceptable violation of the parties' justified expectations or of legal certainty.

Section 10

Where a choice of the applicable law is admissible, such choice shall be express or be otherwise sufficiently manifest.

Section 11

1. Whether a natural person is a minor and to what extent he is capable of performing legal acts, is determined by his national law. Where the person concerned is a national of more than one state and has his habitual residence in one of those states, the law of that state shall be deemed to be his national law. Where he does not have his habitual residence in any of those states, the law of the state of his nationality with which – having regard to all circumstances – he is most closely connected, shall be deemed to be his national law.
2. With respect to a multilateral legal act which falls outside the scope of application of Regulation (EC) no. 539/2008 of the European Parliament and the Council of 17 June, 2008 on the law applicable to contractual obligations (Rome I) (OJ EU L 177), article 13 of that Regulation shall apply by analogy to a plea of incapacity by a natural person who is a party to such a legal act.

Section 12

1 . A legal act is formally valid if it satisfies the formal requirements of the law that is applicable to the legal act itself, or of the law of the state where the legal act was performed.
2. A legal act performed between persons who are in different states is formally valid if it satisfies the formal requirements of the law that is applicable to the legal act itself, or of the law of one of those states, or of the law of the state where any of those persons has his habitual residence.
3. Where the legal act has been performed by an agent, a state as referred to in subsections 1 and 2 means the state in which the agent was present at the time of performing that act, or of the state where he had his habitual residence at that time.

Section 13

The law governing a legal relationship or legal fact shall also apply to the extent it establishes a presumption of law or contains rules apportioning the burden of proof with respect to that legal relationship or that legal fact.

Section 14

Whether an action is barred or a right extinguished by a statute of limitations shall be determined by the law that is applicable to the legal relationship on which that right or claim was based.

Section 15

1. Where a person's national law is applicable and the state of that person's nationality has two or more legal systems that are applicable to different categories of persons or in different territorial units, the relevant rules in force in that state shall determine which of these legal systems applies.
2. Where the law of a natural person's habitual residence is applicable, and the state of that person's habitual residence has two or more legal systems that are applicable to different categories of persons, the relevant rules in force in that state shall determine which of these legal systems applies.
3. In the absence of any rules as referred to in subsections 1 and 2 in a state, or if these rules do not, in the particular circumstances, identify an applicable legal system, the legal system of the state with which – having regard to all circumstances – the person concerned is most closely connected, shall apply.

Section 16

1. Where a natural person's national law applies and where that person is stateless or where his nationality cannot be ascertained, the law of the state of his habitual residence shall be deemed to be his national law.
2. The rights previously acquired by such a person, which are based on his personal status, in particular the rights arising from marriage, shall be respected.

Section 17

1. The personal status of an alien who has been granted a residence permit as referred to in section 28 or section 33 of the Aliens Act 2000, or of an alien who has been accorded equivalent asylum status in another state shall be governed by the law of his domicile, or, if he has no domicile, by the law of his residence.

2 2. The rights previously acquired by such an alien, which are based on his personal status, in particular the rights arising from marriage, shall be respected.