

European Union's Stance on the Rotterdam Rules

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ABSTRACT: In today's rapidly globalizing world economy, the importance of maritime transportation is increasing. Today, approximately 80% of the global transportation services is done by the seas. Therefore, the international laws and regulations that outlines the rights and responsibilities/obligations of the carriers and cargo owners is of very high importance for the smooth running of this global maritime transportation system. On the other hand, today, "door to door" and "multimodal" transport is getting widely used. However, during this type of highly complicated transportation, the rules and the applicable laws with regards to rights and obligations of the parties (carriers and cargo owners) greatly vary, and this creates several problems particularly about the carrier's liabilities.

For offering solutions to these problems and creating world-wide uniformity about the carrier's and cargo owners' rights and obligations, United Nations Commission on International Trade Law (UNCITRAL) has offered alterations to the current international regulations in force (which are now generally called as Rotterdam rules), and, to this date, more than 20 countries have signed this new international agreement.

On the other hand, as is well known, the European Union countries are important players as both carrier and cargo owner countries today, and their perspectives and decisions concerning the approval of the Rotterdam Rules is of very high importance for the future and international applicability of these rules.

In this context, this article will first focus on the history and the legal structure of the EU, and then study the European Union's stance on the Rotterdam Rules, the impact of the possible EU legislation preparation on the same areas, and the existent steps that are taken (as well as possible future steps) by the European Commission with regards to alternative legislation creation for the EU seas.

1 INTRODUCTION

Globally applicable rules have always been a necessity due to the merchant ships sailing through the territorial waters of different states and facing various problems generally stemming from the highly divergent judicial systems in these different geographies. In this context, to a great extent, the studies on this matter have concentrated on the liabilities of the carrier.

As is known, the current rules about the liabilities of the carrier in maritime transport came into force with the "Hague Rules" (1924 Brussels Convention)

and Visby Rules (1968 Brussels Protocol).⁴ The 1978 Hamburg Rules, prepared by United Nations, came into force in 1992 but the implementation couldn't reach the level of Hague Rules, which are implemented world-wide.

In this framework, the attempts for implementation of new international rules, namely Rotterdam Rules, and expansion of the liabilities of the carriers in maritime transport (though, not as much as Hamburg) and transferring some of the non-maritime transport liabilities to the carrier, have speeded up.

⁴ Actually, there is also a 1968 Special Drawing Right protocol amending the rules.

As a result of these attempts, on 11 December 2008, the United Nations General Assembly, in its 63rd session, adopted the "Convention of Contracts for the International Carrying of Goods Wholly or Partly by Sea". The signing ceremony was held in Rotterdam on 23 September 2009. Rotterdam Rules composed of 96 articles and 18 chapters, basically expanded the liabilities of the carrier compared to the Hague Rules, and expand carrier's liability to the entire carriage process, considering it as a part of the combined transport.

When analyzed thoroughly, by taking into account its role in the world trade and the global logistics services, the European Union is one of the mostly affected regions by these kinds of regulations with respect to its position as a block of states composed of both cargo owners and carriers. So, the analysis of the member states' views about the Rotterdam Rules and the attempts for probable alternative rules is important. Currently EU has set free its member states in adopting the Rotterdam Rules.⁵ But the European Commission is preparing some binding regulations for member states and the European carriers are putting pressure on the Commission about this matter.

In this context, in the following sections, firstly EU's historical background and binding nature of the EU law for the member and candidate states will be briefly analyzed (regional law), then international regulations regarding the liabilities of the carrier will be summarized (international law) and finally the effects of EU's possible future legislation preparation about the liabilities of the carrier on the existing international law will be examined (the relationship between regional and international law).

2 THE HISTORICAL BACKGROUND OF THE EU AND THE EU LAW

Many political leaders have tried to create a united and powerful Europe in the history. But a real European integration movement, depending on the free-will of the individuals, could only start after the

Second World War.⁶ In this context, in the post-war period, the Western Europe states took the first step for the integration. France and England made an alliance with the Treaty of Dunkirk. In March 1948, these two powers and the Benelux countries, signed the Treaty of Brussels, later called as the Western European Union.

In those years, the USA, supporting the Europeans to act together as a single body, played an important role in the start of the integration process. In 1947, Harry Truman, the president of the USA, proposed an aid program, implemented under the leadership of George Marshall, the secretary of the state, to relieve Europeans from the hardships they were facing.⁷ The European federalists aimed to establish a United States of Europe, and defended that the integration had to depend on the free will of the public.⁸ For this goal, at the end of a conference in London, they established The Council of Europe in Strasbourg, which would harmonize the laws of European states and promote the development of human rights and cultural cooperation in Europe.⁹ The other positively effecting factor in the integration of Europe during those days was the establishment of North Atlantic Treaty Organization (NATO) in 1949. By means of this organization, the European powers left the critical defense issues to the NATO and concentrated on the economic development, cooperation and formation of the common law.¹⁰

However, the really successful steps, promoting further political integration in Europe, would be taken in the following years. In this context, the European decision makers concentrated on the energy sources (the most valuable one being coal during those days) and raw materials (iron and steel being at the top of the list).¹¹ European leaders, which came to conclusion that the political integration would only be realized through technical steps and prior economic integration, thought that the single market and the integrated European economy would be the catalyst for the solutions of political problems of the continent.¹²

⁶ For the historical analysis of the developments and integration efforts in Europe See: **Palmer, Robert Roswell (Edt.)**, *A History of the Modern World*, New York, 1995, p. 97-389.

⁷ **Dinan, Desmond**: *Europe Recast: A History of European Union*, London, 2004, p.13-45.

⁸ **Oudenaren, John Van**: *European Integration: A History of the Three Treaties*, **Tiersky, Ronald (Edt.)**, Europe Today, Oxford, 1999, p.241-273.

⁹ **Dinan**, p. 24-25.

¹⁰ **Dinan**, p.15.

¹¹ **Dedman, Martin J.**: *The Origins and the Development of the European Union 1945-1995: A History of European Integration*, London, 1996, p.57.

¹² **Dinan**, s. 13-45.

⁵ The EU has many regional regulations for transport in general, and for maritime transportation in particular. These mentioned regulations have a binding character for the member states but do not have a regulatory character for the private law relationships between parties. The EU regulations concerning the carrier's liability details the carrier's liability especially in air and road transport. The regulations related to the carrier's liability in maritime transportation are about the rights of the passengers and their luggage safety, yet, there are not detailed regulations pertaining maritime carriage of goods. See <http://eur-lex.europa.eu/Result.do?idReq=1&page=1> ve <http://eur-lex.europa.eu/Result.do?idReq=1&page=2>

This plan was announced by the Schumann Declaration on 9 May 1950, and the European Coal and Steel Community (ECSC), the first organization of the European integration was established in 1952. Germany, France, Italy, Belgium, Luxemburg and Netherlands were the first six signatories of the Treaty. The establishment of the European Economic Community (EEC) and European Atomic Energy Community (EAEC) by Treaties of Rome took the integration idea further and expanded it to other areas. Following the economic integration theories of the period, the free movement of the goods, services, capital and labor were seen as the main tools of establishment of single market in Europe and this was clearly expressed in the EEC Treaty.¹³ The Single European Act (SEA), signed in 1986, finalized the steps of forming a single market by assigning a schedule, and finally, the single market has been established in 1993. Maastricht Treaty (Treaty of European Union (TEU), signed in 1992, had played a key role in transforming EEC into EU, and additionally has founded the three important pillars – European Communities (EC), Common Foreign and Security Policy (CFSP), Justice and Home Affairs (JHA) – on which the EU is built on. By Maastricht Treaty, an economic and monetary union (transition to Euro) policy has also been established. Amsterdam Treaty, signed in 1997, merged the existing legal texts and formed a legal framework for the union. Subsequently, Nice Treaty, came to force in 2003, replaced Amsterdam Treaty as the highest legal text of the EU. A probable constitution would play a key role for the EU integration to gain a legal identity. However, because of the lacking consensus on the matter (especially due to vetoes of the France and Netherlands), it was greatly simplified and has come to life with the Lisbon Treaty in 2007. This treaty has come to force in the end of the 2009 after several referendums and debates in member states.

During this historical process in Europe, the traces of the transformation from intergovernmental nation states relationship to the multi-level governance (local, national, supra-national levels jointly producing common policies) can be found. Today, the political power of the EU organs has greatly increased and this situation can be seen when highly developed legal framework of the EU – *Acquis Communautaire* – is examined.

In addition to the *sui-generis* “deepening axis”, the European integration has also “widened” in time. The number of the EU members reached to 9 by the memberships of United Kingdom, Ireland and Denmark in 1973 and by the full membership of Greece, the total number of the integration

movement reached to 10, starting the expansion to the south-eastern Europe. The number of the EU members reached to 12 by the memberships of Spain and Portugal in 1986, and it reached to 15 by the memberships of the Finland, Sweden and Austria in 1995. After the end of the Cold War and the collapse of the Berlin Wall, the probability of the expansion of the Union towards east including Central and East European countries, and also unification of West and East Germany became a hot issue. After the unification of West and East Germany, by the fifth enlargement wave, Poland, Check Republic, Slovenia, Slovakia, Hungary, Estonia, Latvia, Lationia, Cyprus (de facto: South Cyprus) and Malta became the members of the EU in 2004 and the number of the members reached to 25. By the memberships of the Bulgaria and Romania in 2007, the number of the EU members has reached to 27. By the future membership of the current candidate countries; Turkey, Croatia, Macedonia, Iceland and Montenegro, the number of the EU members will reach to 32 and the remaining Balkan states will be the potential candidates of the future enlargement waves.

EU, during the above summarized deepening and widening processes, has developed a continuously evolving *sui-generis* supranational law.¹⁴ Actually, the EU Law (*Acquis Communautaire*), developed on the Law of Causality, different from the Case Law, is published within the in the Official Journal of European Communities, which today is composed of more than 100.000 pages including binding regulations for the member states. These EU regulations have started to affect maritime industry in time. For example, the single cabotage for EU and its related regulations has come to force during the last decades.

These new supranational regulation are indeed harmonious with the global regulations (for example International Maritime Organization (IMO) rules), but it takes them further for the EU member states and bring new standards (for example; European Maritime Safety Agency (EMSA) inspecting the maritime training in the member states, prevention of marine pollution by means of EU legislation supplementing the MARPOL Convention), and has brought new additional regional and binding rules for maritime transportation.

Likewise, probable EU legislation which will develop in the same areas covered by the Rotterdam Rules will cause a multiple law order in related fields.¹⁵ Additionally, contrary to the voluntary Rotterdam Rules, the EU legislation will absolutely be binding for the member states unless they declare

¹³ Rosamond, Ben: *Theories of European Integration*, New York, 2000, p. 50-73.

¹⁴ Dinan, p. 266-283.

¹⁵ For the related EU regulation See: reference 2

that they will not participate in and they can manage to stay out of the scope of the legislation by means of some political maneuvers, which the EU law permits.

So the innovations brought by Rotterdam Rules about the liabilities of the carrier will cause interceptions or contradictions between the developing and the current EU regulations, which are effective in the EU waters. Under these circumstances, the EU member states will implement both international and EU law on this matter.

As is known, in international trade, the existence of uniform rules and the successful implementation of these rules help to found an effective and global trade system and provide safe and secure trading activities. The carriage operations of goods, which are the subjects of the international trade, are very important for the international trade. These carriage operations are to a great extent done by means of maritime transportation (approximately 80 %).¹⁶ Therefore, one can say that maritime transportation plays a key role in international trade.

In this context, in the following section, the current international regulations about the liabilities of the carrier (also affecting the EU member states) and the improvements which have been brought by Rotterdam Rules to these regulations will be examined. Subsequently, the EU's perspective on these regulations (the inter-connection of the regionally binding EU law and the globally binding international law) and the probable results of the development EU Acquis in the same fields will be examined.

3 THE CURRENT INTERNATIONAL REGULATIONS ABOUT THE CARRIER'S LIABILITY AND THE ROTTERDAM RULES

The international characteristic of the maritime sector in general and the maritime carriage of goods in particular, require uniform legal regulations in this field. This necessity, in the 20th century, has led to the preparation and the implementation of Hague, Hague-Visby and Hamburg rules (Conventions). These mentioned conventions aimed at reaching an international law order binding for the signatories in maritime carriage of goods.¹⁷ However these conventions avoided of regulating all the issues related to maritime transport and solving all the problems of the sector, so the ownership, registry and possessor of the ship and the agent services

¹⁶ UNCTAD, 2008 Review of Maritime Transportation.

¹⁷ **Faria, J.A.Estrella:** "Uniform Law for the International Transport at UNCITRAL: New Times, New Players, New Rules" (Texas International Law Journal, 2009, S. 44, p. 277-319).

issues were left to the national laws. Hague, Hague-Visby and Hamburg Conventions, basically, considered and regulated the loss and damage of the goods carried by sea, conditions of the irresponsibility from loss and damage and limitations of the liabilities.¹⁸

Also, the amount of the goods carried by sea increased due to the boom in international trade especially in the last decades. The increase in maritime transport traffic caused new legal problems.¹⁹ Because of the development of new transport methods; construction of new type of ships for the new type of cargo, combination of maritime transport with other transport modes²⁰ and the innovations in the delivery methods of the international trade, the rules of these conventions had to be changed and adapted to new conditions. Also, the development of the e-trade and the replacement of the current written/printed papers of transport law by the papers prepared in electronic format²¹ required the regulation of these new issues which were not regulated by the related conventions in the past.

The necessity of simplification of legal language and eliminating the vague expressions, the aim of taking different legal systems into a common position, the inclusion of the practical solutions of the implementation problems to the legal texts, constituted a basis for preparation of a new regulation concerning the international carriage of goods.

The preparation process of a new international convention started in 1990s by the joint study of The United Nations Commission on the International Trade Law (UNCITRAL) and the Committee Maritime International (CMI), and has been finally completed after a 10 year long extensive work. The Rotterdam Rules, which have appeared after this effort, have touched on the issues related to the transport law and in this framework (like the previous similar regulations) have not focused on the issues stemming from real law and agency law. The issues related to carriage are forming the basis of Rotterdam Rules but the issues like freight and right

¹⁸ For detailed information, evaluation and comparisons See. **Ilgın, Sezer:** "Hamburg Kurallarının Türk Taşıyan ve Taşıtanlara Etkisi (I)" (Denizati, 1993, S. 2-3, p. 45-48 ve **Ilgın, Sezer:** "Hamburg Kurallarının Türk Taşıyan ve Taşıtanlara Etkisi (II)" (Denizati, 1993, S. 4-5, p. 37-44).

¹⁹ **Schelin, Johan:** "The UNCITRAL Convention on Carriage of Goods by Sea: Harmonization or De-Harmonization" (Texas International Law Journal, 2009, S. 44, p. 321-327).

²⁰ **Fujita, Tomotaka:** "The Comprehensive Coverage of the New Convention: Performing Parties and Multimodal Implications" (Texas International Law Journal, 2009, S. 44, p. 349-373).

²¹ **Alba, Manuel:** "Electronic Commerce Provisions in the UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea" (Texas International Law Journal, 2009, S. 44, p. 387-416).

of claim are excluded. Rotterdam Rules have prepared the legal substructure of the e-trade as well as included regulations related to door-to-door and multimodal transport. The Rotterdam Rules have aimed at harmonizing the legislation about carriage of goods with containers in parallel to the development and increase in the container transport sector. The Rotterdam Rules have preferred to stay away from the doctrinal debates and showed a pragmatic approach. The current global implementation in maritime transport has been upgraded to an international convention for the first time by Rotterdam Rules and became binding for the signatory states. In order to eliminate the differences between the legal systems, Continental and the Anglo-Saxon laws have been harmonized in the text of the Rotterdam Rules.²²

Article 1.5 of the Rotterdam Rules defines “carrier” as a person that enters into a contract of carriage with a shipper. To eliminate the confusions in practice, article 1.6 defines the concept of “performing party”. Also, the definition of the performing party has been written in a quite wide perspective beyond the concept of carrier in practice. In the article 1.6 a person that performs or undertakes to perform any of the obligations with respect to receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods called performing party and will be responsible. This situation expands the definition and liabilities of the carrier written in the international regulations.

The general scope of application of the Rotterdam Rules is clarified by the article 5. According to this article, convention applies to contracts of carriage in which the place of receipt and the place of the delivery are in different states, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different states, but, according to the contract of carriage, any one of the following places should be located in a contracting state:

- The place of receipt,
- The port of loading,
- The place of delivery or,
- The port of discharge.

According to the article 5.2, the convention applies without taking in to consideration the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee or any other interested parties. Article 6 of Rotterdam Rules designates the exceptions for the application of article 5. Article 6.1 states that the convention does not

apply to the following contracts in liner transportation:

- 1 Charter parties; and
- 2 Other contracts for the use of a ship or of any space thereon.

As stated by the article 6.2, Rotterdam Rules do not apply to contracts of carriage in non-liner transportation except when:

- 1 There is no charter party or other contract between the parties for the use of a ship or of any space on it; and
- 2 A transport document or an electronic transport record is issued.

Obligations of the carrier are regulated in the 4th chapter of the Rotterdam Rules. According to the article 11, the carrier shall carry the goods to the place of destination and deliver them to the consignee in accordance with the terms of the contract of carriage. As stated by the article 12, the carrier or a performing party (the carrier in practice or any other person written in the contract) will have the responsibility of the goods in the period which starts at receiving the goods for carriage and ends when the goods are delivered. The parties may designate and extend the responsibility period with the contract in accordance with the Rotterdam Rules and limitations expressed in the convention.

By the article 13 of the Rotterdam Rules the specific obligations of the carrier has been designated. The carrier, during the period of its responsibility, shall properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods. Specific obligations of the carrier applicable to the voyage by sea are written in the article 14. The carrier is bound before, at the beginning of and during the voyage by sea to exercise due diligence to:

- 1 Make and keep the ship seaworthy;
- 2 Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and
- 3 Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

A carrier or a performing party, as stated in article 15, may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying or rendering goods harmless, if the goods are, or reasonably appear likely to become an actual danger to persons, property or the environment. In the frame of the article 16 of Rotterdam Rules: after the loading of the goods, the carrier or a performing party may sacrifice goods at sea when the sacrifice is

²² Durak, Onur Sabri: *Deniz Yolu ile Eşya Taşıma Hukuku'nda Son Gelişmeler ve Rotterdam Kuralları Üzerine Değerlendirmeler*, Yağız Muammer/Yılmaz, Ayşe (Edt.), TMMOB Gemi Makineleri İşletme Mühendisleri Odası IV. Ulusal Sempozyumu Bildiriler Kitabı (s. 94-106), İstanbul, 2009.

reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

Liability of the carrier for loss, damage or delay has been written in the 5th chapter and between the articles 17 and 23 of the Rotterdam Rules. Article 17 explains the basis of liability, article 18 regulates the liability of the carrier for other persons and article 19 regulates the liability of maritime performing parties. Article 20 points out the joint and several liabilities, article 21 defines delay. In the article 22 the calculation of compensation has been written. Article 23, at the end of the 5th chapter, considers the notice in case of loss, damage or delay. In the following part, the liabilities of the carrier stemming from the loss, damage or delay are examined.

If the claimant proves that the loss, damage or delay took place during the period of the carrier's responsibility, the carrier is liable for loss of or damage to the goods as well as for delay in delivery. However, the carrier is relieved of all or part of its liability if he can prove his absence of fault that the loss, damage or the delay has not caused by him or any persons referred to in article 18. The carrier is also relieved of all or part of its liability, if he proves that the events or the circumstances referred to in article 17.3 caused or contributed to the loss, damage or delay. Being different from Hague Rules, in Rotterdam Rules the carrier must prove his absence of fault or negligence in order to be relieved of all or part of its liabilities. "The navigation fault" in article 4.2.(a) of Hague Rules has not been stated in Rotterdam Rules, in other words, it has not regarded as a cause that the carrier is relieved of all or part of its liability. There is a condition of irresponsibility in Rotterdam Rules that Hague Rules does not include, is the "reasonable measures to avoid or attempt to avoid damage to the environment" in article 17.3 (n).

If the claimant proves that the loss, damage or delay was probably caused by or contributed to by,

- 1 The unseaworthiness of the ship;
- 2 The improper crewing, equipping and supplying of the ship; or
- 3 The fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage and preservation of the goods, the carrier is also liable, notwithstanding article 17.3, for all or part of the loss, damage or delay.

As required by the article 18, the carrier is not only liable for its own acts and omissions but also is liable for the breach of its obligations caused by the acts or omissions of:

- 1 Any performing party;
- 2 The master or crew of the ship;

- 3 Employees of the carrier or a performing party; or
- 4 Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

Unless the opposite is agreed in favor of the shipper in the contract or there are causes eliminating the limited liabilities of the carrier, the liability of the carrier is limited to 100 sterling per part or unit according to Hague Rules. However, the weight unit of the goods and limitation of the liabilities as to weight was not mentioned by Hague Rules. By Visby Protocol, that amended Hague Rules, the problem stemmed from the expression of "unit" tried to be solved and the limit of the liability was fixed with a certain amount of per part or per each kilogram of grossweight, whichever amount is the higher. In 1979, the protocol which was adopted in Visby in 1968 was amended and a new system related to the limitation of the liabilities was formed. As required by the rules known as Special Drawing Right (SDR), the limit of liability per part or unit was 667.67 SDR or 2 SDR per each kilogram of grossweight, whichever amount is the higher. As required by the Hamburg Rules, signed in 1978 and came into force in 1992, the limit of liability is 835 SDR per part or 2.5 SDR per grosskilogram, whichever amount is the higher.²³

In the 12th chapter of Rotterdam Rules, article 59 regulates "limits of liabilities", article 60 regulates "limits of liability for loss caused by delay" and article 61 regulates "loss of the benefit of limitation of liability". As required by the article 59, essentially regulating the limits of the carrier's liability, the carrier's liability for breaches of its obligations is limited to 875 SDR per package or other shipping unit, or 3 SDR per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in the article has been agreed upon between the carrier and the shipper. When compared with the previous Hamburg Rules, it is seen that Rotterdam Rules have increased the limits of liabilities from 835 SDR to 875 SDR per part or unit, and from 2.5 to 3 SDR per weight unit. Neither the carrier nor any of the persons referred to in article 18 is entitled to the benefit of the limitation of liability, if the claimant proves that the loss resulting from the breach of the carrier's obligation under the convention was attributable to a personal act or omission of the person claiming a

²³ For the detailed study and the evaluation See: **İlgin, Sezer: Deniz Hukuku – II**, İstanbul, 2008, p. 42-44

right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.²⁴

Judicial or arbitral proceedings in respect of claims or disputes arising from the breach of an obligation of the carrier, must be applied in 2 years after the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. This period, provided in article 62 shall not be subject to suspension or interruption. However, as required by article 63, the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations.

4 CONCLUSIONS: EUROPEAN UNION AND ROTTERDAM RULES

Adoption of Rotterdam Rules by a greater number of countries is crucial for the increasing implementation of the rules internationally. At this point, it can be said that especially the carriers are not approaching to these rules positively, because of their expanding liabilities by Rotterdam Rules compared to the Hague-Visby Rules. Since Rotterdam Rules both expand the carrier's liabilities in certain areas and lessen them in other areas when compared with Hamburg Rules, the comparison of Rotterdam Rules with Hamburg Rules will be the subject of another academic study. In this context, this paper has concentrated on the differences between Hague Rules, which have an implementation in a larger geography, and the Rotterdam Rules. When these differences (expanding liabilities of the carrier) are considered it can be understood why the carriers stay away from the Rotterdam Rules.

Similarly, the EU member states as leading carrier countries are approaching to Rotterdam Rules cautiously. Although the EU set free its members to about the rules, it is observed that EU Commission is under pressure of the union's carriers in order to bring alternative regulations regarding the liabilities of the carriers.

At this point, it can be said that the European carriers are not considering the Rotterdam Rules as a positive development, but they are pressing for alternative legislation, to be exempted from these regulations at least for the maritime operations

performed in the EU seas, in which the *Acquis Communautaire* is valid, in case Rotterdam rules find a global implementation area.

Yet, the European maritime carriers are also uncertain about this issue because with regards to the liabilities, they are not also approaching positively to the regional regulations because they increase the number of the legislations to be complied with. The national and regional attitudes of the EU countries, which are both carriers having maritime fleets, and shippers making industrial products, will affect the future of Rotterdam Rules.

Today, one can say that there is an uncertainty in the EU, which is a regional political and economic integration movement developing *sui-generis* law for its own region, about Rotterdam Rules and which legislation (international or regional) will be effective within the EU seas.

There are contradictory opinions set forth about the European carriers' tendencies about the Rotterdam Rules. In fact, at this point, one can say that the carriers or the shippers lobbying activities on the new legislation, will determine the result.

Yet, we can still say that the EU member states will be the leading actors in the future of Rotterdam Rules' global implementation with their globally dominant maritime transport companies such as MAERSK, Hapag Lloyd, Hamburg-Süd, etc. At this point, the attitudes of the interested parties such as the carriers and the shippers (and their countries) on this issue will determine the future of this international legislation. The European carriers may put more pressure on the EU Commission to prepare alternative regional regulations, if they are forced to adopt Rotterdam Rules in future because of the commercial obligations.

Also, as mentioned before, if Rotterdam Rules are not globally adopted, the maritime transportation companies, which are generally critical of regional regulations, may choose a way in line with the Hague, Hague-Visby or Hamburg rules, and resist a probable EU legislation. In the final analysis, one can say that, as it is expanding its legislative framework day by day, the EU may establish a uniform legislation for the liabilities of the carriers in EU seas, probably not in the near future but certainly in the long term.

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²⁴ The evaluation and the critics regarding the liability of the carrier
See: **Durak**, p. 98-104.

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