

REPLY BY THE NEDERLANDSE VERENIGING VOOR VERVOERRECHT (NVV) (DUTCH TRANSPORT LAW ASSOCIATION) TO THE CMI QUESTIONNAIRE OF 8 APRIL WITH REGARD TO COURT PROCEDURES IN YOUR JURISDICTIONS AND FLAG ADMINISTRATIONS (COVID-19)

Introduction

The Kingdom of the Netherlands is made up of four separate countries:

- the Netherlands
- Aruba
- Curaçao
- Sint Maarten.

Each of the countries has its own government that is responsible for the legislation applying in the particular country. However, within the country of the Netherlands there are two separate legal systems operating in:

- the Netherlands in Europe, and
- the Caribbean Netherlands (the islands of Bonaire, Sint Eustatius and Saba), the government of the Netherlands being responsible for the legislation applying in both jurisdictions. Consequently there are five different legal systems existing within the entire Kingdom.

In civil matters, the five jurisdictions are serviced by two court systems; one in the Netherlands in Europe¹, and one in the Dutch Caribbean (Aruba, Curaçao, Sint Maarten and the Caribbean Netherlands)².

With regard to commercial shipping only the Netherlands in Europe, Curaçao and Sint Maarten maintain registers and flag administrations.

1. Are the Courts in your jurisdiction open and functioning as per normal?

Netherlands in Europe: In principle it is business as usual, but the court buildings are closed (with skeleton crews remaining behind, and judges and other staff working online from home as much as possible) and hearings in person are only held in

¹ By District Courts (first instance), Courts of Appeal and a Court of Cassation: <https://www.rechtspraak.nl/English>

² By the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba: <http://www.gemhofvanjustitie.org/?lang=en> which deals with cases in first instance and in appeal, and a Court of Cassation shared with the Netherlands in Europe.

extremely urgent cases. All other hearings are either held by video conference, cancelled and replaced by written pleadings, or postponed/rescheduled after consultation with the parties. All other parts of court procedure are in principle unaffected.³ A secure emailing system has been set up to facilitate communication in cases that would otherwise

Dutch Caribbean: Here too it is business as usual, but with limited access to the court⁴. The written part of procedures continues, although email is used to communicate. In view of the differences on each island, people are advised to contact their local lawyer or the relevant (sub)court to see what the local situation is.

2. *If not, are there any exceptions to the arrest of ships and / or are other injunctive or enforcement procedures available?*

Netherlands in Europe: In principle, arrest of ships and other injunctive or enforcement procedures remain available as usual.

The courts have issued a statement about attachment in general (thus not limited to ships or aircraft):

It remains possible to submit applications for attachment. When considering these applications (whether or not accompanied by an application for sequestration of the attached property) the current pandemic and the related (economic) situation will be taken into account where appropriate. It is possible that the court will ask for supplementary argumentation, apart from other questions that may arise. You will receive information in each case from the court through the usual channels.

The Royal Professional Organization of Judicial Officers in The Netherlands (the Dutch organisation of bailiffs, which take care of the enforcement of judgments) have issued a statement that they will minimize personal contact and exercise restraint in evictions from homes and enforcement measures against personal property⁵. But we have received no signs so far that enforcement in commercial shipping matters is different from normal.

Dutch Caribbean: Attachment applications will be dealt with by the court in writing within the usual time frame⁶. Injunctive and enforcement procedures at the court remain available. We are awaiting more detailed information regarding enforcement by the bailiffs, but the information so far is that the offices as such are closed but that bailiffs can still be contacted to take the necessary enforcement measures.

³ Vide (in Dutch): https://www.rechtspraak.nl/paginas/coronavirus.aspx?pk_campaign=corona&pk_keyword=banner

⁴ Vide (in Dutch): <http://www.gemhofvanjustitie.org/corona>

⁵ Vide (in Dutch): <https://www.kbvg.nl/8155/coronavirus.html>

⁶ Vide (in Dutch): <http://www.gemhofvanjustitie.org/corona>

3. *Can Judicial Sale of Ships still take place?*

Netherlands in Europe: Judicial sale of ships can still take place. The main rule is that a judicial sale takes place in an auction in open session before a court or a civil law notary. We assume the court or the civil law notary will discuss with the party enforcing the claim whether an auction can take place in person, or whether some other alternative can be worked out. Under certain conditions an auction can be avoided if there is an offer from a buyer that can be approved by the court on the basis of a written application. In that case the judicial sale can take place in writing entirely.

Dutch Caribbean: We are awaiting more detailed information regarding the judicial sale of ships, but we have reason to believe judicial sales can still take place.

4. *Do you know how long the Courts in your jurisdiction will be closed for?*

Netherlands in Europe: The current measures apply until 28 April 2020, or so much longer as the judiciary decides on the basis of the measures taken by the national government

Dutch Caribbean: The current measures apply until further notice⁷.

5. *Is the flag registry in your jurisdiction (if applicable) operating as per normal in terms of the registration of ships and registration of mortgages and deletion of same.*

Netherlands in Europe: Yes. The staff of the *Kadaster* (Cadastre, Land Registry and Mapping Agency), which maintains the register of ships and the register of aircraft, is working from home as much as possible, but the offices are open normally for paperwork. Meetings are held by phone or videoconnection. The client contact centre may be a little more difficult to reach in view of the many calls⁸.

The Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Water Management, which maintains the Dutch bareboat registry, reports difficulty reaching them by phone, but all other operations should be normal⁹.

Curaçao: We are awaiting more detailed information from the *Kadaster* (Ship registry) and the Maritime Authority (part of the Ministry of Traffic, Transport & Urban Planning) (bareboat registry).

Sint Maarten: We are awaiting more detailed information from the Department of Civil Aviation, Shipping & Maritime Affairs (part of the Ministry of Tourism, Economic Affairs, Transport and Telecommunication) (ship registry and bareboat registry).

⁷ Vide (in Dutch) <http://www.gemhofvanjustitie.org>

⁸ Vide (in Dutch): <https://www.kadaster.nl/-/coronavirus-dienstverlening-kadaster-gewoon-beschikbaar>

⁹ <https://english.ilent.nl/themes/themes/corona-covid-19>

6. *Has your flag administration issued any special exemptions for the period of the Pandemic*

Netherlands in Europe: Yes. See the dedicated Covid-19 page on the website of the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and Water Management: <https://english.ilent.nl/themes/themes/corona-covid-19>

Curaçao: Yes. See the Covid-19 information on the home page of the Maritime Authority (part of the Ministry of Traffic, Transport & Urban Planning): <http://maritimecuracao.org/>

Sint Maarten: We are awaiting more detailed information from the Department of Civil Aviation, Shipping & Maritime Affairs (part of the Ministry of Tourism, Economic Affairs, Transport and Telecommunication)

10 April 2020

Taco van der Valk