

THE DUTCH LAW PERSPECTIVE ON THE ENFORCEMENT OF MARINA OPERATOR CLAIMS

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This article focuses on a very specific aspect of maritime law, i.e. the remedies that exist under Dutch law in order for a marina operator to pursue a claim against a vessel owner either based on a contract or based on torts. This is not a straightforward matter, as it involves various areas of law as well as specific maritime legal issues, for instance contract law, the right of attachment, including the 1952 Arrest Convention,¹ and the right of retention. After a general introduction about pleasure craft and marinas in the Netherlands, and some general considerations about the legal framework that applies, an overview of the possibilities will be given. The various requirements that need to be met will be discussed, focusing on the specific situation of a claim by a marina operator against a vessel owner.

A specific issue that may arise in respect of a marina operator's claim against a vessel owner is that it is not always clear how the agreement that forms the basis for the claim should be qualified. This is of importance, as the way an agreement is qualified, and more specifically which rights and obligations each party has under the agreement, also determines the remedies that are available to the claimant. The right of retention is only available if a certain degree of control is exercised over the vessel, as the right of retention is the right to suspend the obligation to return the vessel, and this sometimes constitutes a problem in respect of a marina operator's claims. This will be explained in more detail below. Certain specific provisions in the Civil Code concerning the right of retention of vessels will also be addressed.

As it is not necessary to obtain permission from the courts to exercise a right of retention, this is often the most straightforward option for a marina operator.

If it is not clear whether a right of retention exists and/or may be exercised, another option for enforcing a claim is an attachment, which in the Netherlands is also possible before a title for enforcement is obtained (a so-called conservatory

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¹ *International Convention Relating to the Arrest of Seagoing Ships, Brussels 10 May 1952, UNCTC 6330.*

attachment). Obtaining and effecting an attachment order is relatively easy in the Netherlands. The procedure is expedient and fast, making the Netherlands an ideal location for a claimant to pursue such claims.

Certain additional considerations will also be discussed with regard to the identity of the debtor, as well as the applicable law, as these may give rise to problems in respect of enforcement.

In the past, it was only possible to effect an order obtained in the Netherlands within Dutch jurisdiction, and therefore it was necessary that the vessel was located within the Netherlands (or expected to arrive there in due course) in order to obtain permission from the court to attach a vessel. However, the revised Brussels I Regulation allows for the possibility of exporting judgments throughout the EU even if the decision is a so-called *ex parte* decision, which is a decision where only the applicant is a party to the proceedings. The other party is unaware of the proceedings until the very moment that enforcement is sought. Since vessels are moveable objects, this may provide for a useful additional possibility for enforcement within the EU, and therefore this new development will also be discussed.

Keywords: security and enforcement of maritime claims; marina operator; Dutch law; arrest; attachment; retention.

INTRODUCTION

The Netherlands is well known as a densely populated country with a population of approximately 17 million and a population density of 412 people per square kilometre (507 if water is excluded). It is less known that there are also approximately 1,100 marinas (of which 50 percent are commercially operated) spread over the country, not only situated near the coast but also on the many lakes and rivers. In addition, there are around 500,000 pleasure craft in all shapes and forms (and during the summer months many more from abroad). More than 2.5 million people in the Netherlands would identify themselves as water sport enthusiasts or actively engaged in water sports.²

The situation as described is, however, not reflected in the law. The Civil Code (CC) does not contain a definition of or reference to pleasure craft. There is only the distinction between seagoing and inland vessels,³ not between commercially operated vessels and pleasure craft. No special regime for pleasure

² See <https://waterrecreatienederland.nl/content/uploads/2018/11/factsheet-waarde-economie-waterrecreatie.pdf>.

³ Article 8:1 CC gives the definition of a ship. Article 8:2 CC defines what qualifies as a seagoing ship, while Article 8:3 CC deals with inland vessels.

craft exists.⁴ This means that in order to establish which regulations apply to a pleasure craft, one must determine whether the vessel qualifies as an inland vessel or a seagoing vessel. There is no obligation to register a pleasure craft. Registration of the vessel and ownership is solely necessary when the vessel is mortgaged. If a vessel is registered, this is evidenced by markings called the *brandmerk*, which is found on board the vessel.⁵

The fact that there is no obligation to register pleasure craft consequently means that questions may arise in respect of who the rightful owner of a vessel is. In order to be able to attach a vessel, there must be certainty as to whether the vessel is indeed owned by the debtor. The lack of an obligation to register a pleasure craft could therefore directly influence the possibilities of a marina operator when it comes to enforcing a claim.

Specific regulations dealing with pleasure craft do exist,⁶ but these provisions focus on the distribution of pleasure craft as a product placed on the market and stipulate which requirements must be met in respect of, among other things, construction and emission levels for various types of craft.

⁴ That pleasure craft and commercially operated vessels are treated equally is also reflected in the fact that in the Netherlands it is possible to limit liability regarding them both on the basis of the *Convention de Strasbourg sur la limitation de la responsabilité en navigation intérieure (CLNI) of 1988*, https://www.ccr-zkr.org/files/clni/clni_1988.pdf, while in the other State Parties to this convention it is only possible to limit liability for commercially operated vessels. The same situation exists with regard to the new Convention, the *CLNI of 2012*, where vessels only refer to commercially operated vessels for the purpose of the Convention. However, the Netherlands chose to maintain its own definition of ship as including pleasure craft. See the legislative history of the law introducing the new treaty and amending the Civil Code for this purpose, *Memorie van Toelichting, Parlementaire geschiedenis*, kst 34622, Trb. 2013, 72.

⁵ In a case brought before the Court of Amsterdam, the question arose as to who the owner was of a pleasure craft sold whilst still mortgaged by a previous owner without the buyer being aware of the mortgage or able to trace the mortgage, because the vessel was registered under a different name and no markings could be found. The court ruled that the seller had become the owner because he had had the vessel in his possession for more than five years and had acted in good faith (and did not know and could not have known about the mortgage) when he acquired the vessel. The Court of Amsterdam, judgment of 17 February 2016, ECLI:NL:RBAMS:2016:1021, S&S 2016, 65.

⁶ *Wet Pleziervaartuigen* (Pleasure Craft Act) 2016 implementing Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft.

GENERAL CONSIDERATIONS IN RESPECT OF (THE LEGAL FRAMEWORK FOR) MARINAS

Marinas are either commercially operated or state-owned. These latter are mostly owned by local government. Many of the municipalities bordering rivers, lakes, canals etc. have their own set of rules for the berthing and/or ownership of pleasure craft and usually a permit is required⁷ and/or local taxes are due.

When one wants to start and/or operate a marina, a permit is required from the local authorities, and this is only possible if the so-called destination plan of the area has designated a location for this purpose. In addition, marinas are governed by other areas of administrative legislation, e.g. regarding environmental protection, obstruction, safety of navigation and catering permits.

Management of the water itself (rivers, lakes, canals etc.) and of the infrastructure facilities in and around the water (such as bridges,⁸ locks etc.) is carried out either by the *Rijkswaterstaat*,⁹ provinces,¹⁰ water authority¹¹ or municipality. In many cases, it is not easy to establish which body is responsible for a specific waterway or part thereof, or for a specific infrastructure facility.

Many companies active in the water sport industry in the Netherlands are members of an organization named HISWA.¹² This organization acts as spokesperson for the marine industry, with one of its aims being the promotion of the Dutch water sport industry. HISWA members have their own general terms and conditions which can be applied to contracting work, sales and deliveries.¹³

⁷ For Amsterdam, see for instance: http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/Historie/Amsterdam/431086/431086_1.html.

⁸ Some railway bridges are maintained managed and/or owned by ProRail, a private organization responsible for all the railways and connected infrastructure in the Netherlands.

⁹ A public body which is currently part of the Ministry for Infrastructure and Water Management.

¹⁰ The Netherlands has 12 provinces (Dutch: *provincies*) representing the administrative layer between the national government and the local municipalities, with responsibility and legislative authority for matters of subnational or regional importance.

¹¹ In Dutch: *Waterschap* as instituted by the *Waterschapswet* (Water Board Act).

¹² HISWA stands for *Handel en Industrie op het Gebied van Scheepsbouw en Watersport* (Trade and Industry in the Area of Shipbuilding and Watersport). The organization was founded in 1932, originally as the organizer of a boat show that is still organized twice a year. Its website in English can be found at <http://www.hiswa.nl/english>.

¹³ http://www.hiswa.nl/hiswa.nl/up1/ZscxxfmJC_ZkiepzmIE_Voorwaarden_AVL_2011_Engels.pdf.

These general terms and conditions also contain provisions in respect of security rights, which will be dealt with in more detail below. Furthermore, HISWA has sets of rules which can be applied to the premises of a marina¹⁴ and general conditions for the rent of berthing facilities and/or storage spaces.¹⁵ In general, HISWA general terms and conditions are regarded as consumer friendly.

Most commercially operated marinas do not restrict their activities to offering mooring facilities. Many of these marinas are also shipbuilding and/or repair yards. Off-season, during the winter, they offer storage facilities on shore (including cranes to lift vessels into and from the water), and quite often maintenance is carried out¹⁶ during the time a vessel is stored by the marina's personnel, including preparing the vessel for the winter season and below-zero conditions.¹⁷

A vessel owner usually chooses a marina not only for its berthing facilities but also for it to carry out maintenance work on the vessel, and sometimes to look after the vessel in general. This raises the question of how to qualify the agreement concluded between the vessel owner and the marina operator. It can, for instance, be qualified as a contract for works, a berth rental agreement or as a custody agreement¹⁸. The distinction between the latter two is especially relevant when establishing liability if damage is sustained by the vessel during the

¹⁴ *Haven-en werfreglement* (marina and yard regulations).

¹⁵ *HISWA Algemene voorwaarden Huur en Verhuur Lig- en/of Bergplaatsen*.

¹⁶ HISWA has even designed a draft form for members to use in order for vessel owners and marina users to indicate which maintenance they wish to be carried out during the winter period, and also for the storage of the vessel during the winter period. This draft form can be found on the website of various marinas, amended to suit their specific use and purpose.

¹⁷ This includes draining the water from the pipes and replacing it with anti-freeze liquids in order to prevent damage to the pipes due to freezing, which can cause leakage and even the sinking of the vessel. The question of whether a vessel has been properly prepared for winter and whether, if this was not the case, the resulting damage is exempted from the insurance cover, and who is liable for such damage, has been the subject of debate in many court cases. See for instance The Hague Court of Appeal judgment of 28 January 1997, ECLI:NL:GHSGR1997:AL8880 (damage to the vessel was caused by insufficient maintenance, since the vessel had not been prepared for winter before the first period of frost occurred, and therefore insurance cover was denied), and the Court of 's-Hertogenbosch judgment of 13 September 2012, ECLI:NL:RBSHE:2012:BZ8962, (Modderfokker). In this case, no agreement to prepare the vessel for winter had been concluded.

¹⁸ Article 7:600 CC determines a custody agreement as follows: an agreement under which one of the parties ("the safekeeper") engages to keep and return a property which the opposite party (the "depositor") has entrusted or will entrust to him.

time it is located on the premises of the marina. If the agreement qualifies as a custody agreement, the marina owner is under the obligation to return the vessel in the same condition as it was before the custody commenced.¹⁹ The marina operator (the safekeeper or custodian) has the burden of proving whether the vessel was properly looked after and whether everything was done as could be reasonably expected of a custodian whilst taking care of a vessel.²⁰

If the agreement qualifies as an agreement for the hire of a berthing place, then the burden of proof lies with the vessel owner. He has to state and prove that the marina operator did something wrong that resulted in damage to the vessel. This is not always straightforward, as the vessel owner may not know what actually happened. How the agreement is qualified may therefore sometimes be decisive with regard to the question of whether or not the vessel owner receives compensation for damage.

Dutch law also recognizes the possibility of so-called mixed agreements (see Article 6:215 CC, which stipulates that if an agreement meets the requirements of two or more types of agreement, the provisions relating to all these agreements apply). In order to determine how to qualify an agreement under Dutch law, the name of the agreement is of limited importance and represents only one of the factors taken into consideration. Other relevant circumstances are also considered, such as the content of the various provisions, the actual work carried out, the service agreed upon, and the parties' intention.

With or without a written agreement in place, and even if the price has not been agreed upon, according to Dutch law, a vessel owner is under the obligation to pay a reasonable price for the services a marina offers.²¹

GENERAL CONSIDERATIONS IN RESPECT OF ENFORCEMENT

As far as the right of retention and other security rights are concerned, the discussion will focus on possibilities from a civil law perspective. State-owned marinas may have additional possibilities deriving from administrative law, such as imposing administrative fines and penalties, or withdrawing permits, as they are regarded as governmental bodies. However, this may vary from municipality to municipality. Since these possibilities are governed by a different legal framework, they will not be discussed in this article. If, for instance, a

¹⁹ Article 7:605 sub 4 CC.

²⁰ See, for instance, the Court of Amsterdam judgment of 15 March 2006, ECLI:NL:RBAMS:2006:BC8776 (Rasmus).

²¹ See, for instance, Article 7:4 CC (purchase price), Article 7:405 (assignment to carry out work) and Article 7:601 (agreement of custody).

state-owned marina concludes a commercial contract to hire a berthing place with a vessel owner, it may (as an alternative) also make use of the possibilities the Civil Code offers.

In order to establish which tools for security and enforcement are available, it is first necessary to determine the legal basis for the claim for which enforcement is sought. This can either be based on torts (Article 6:162 CC) or an agreement. If the claim is based on an agreement between the marina operator and the vessel owner, then it is relevant to determine the nature and scope of the agreement between them. Provisions allowing for measures to obtain security and/or to facilitate enforcement can be found in either the law (right of retention, attachment of assets of the debtor) or in the agreement concluded between the parties and/or the general terms and conditions agreed upon.

The nature and scope of the agreement and the various rights and obligations directly influence which remedies are available to the marina operator. The right of retention, for instance, is the right to suspend one's obligation to return the vessel. This implies that the creditor must exercise some form of control over the vessel and/or has the vessel in his possession. The question is whether this is the case if a vessel is only located at the marina for maintenance and the claim involves unpaid bills for this maintenance work. This will be discussed in more detail below.

RETENTION OF A PLEASURE CRAFT AS SECURITY FOR A MARINA OPERATOR'S CLAIMS

A general rule in contract law is that the parties to an agreement are both under the obligation to perform, and that if one of the parties does not meet its obligation the other party is entitled to suspend the performance of its own obligation.²² The right of retention is a variety of this general rule whereby one party withholds its performance by not returning the object in its custody.

Article 3:290 CC determines the general right of retention as follows:

A right of retention is the right of a creditor, granted to him in situations specified by law,²³ to withhold the performance of his obligation to return a movable or immovable object to his debtor until his claim has been fully settled.

²² Article 6:52 CC.

²³ Examples of situations specified by law can be found in Article 3:120(3) CC, Article 5:10(1) CC and Article 7:29(1) CC. If no situation specified by law exists, the general rule of Article 6:52 CC often applies.

This means that a right of retention may only be exercised if an obligation to return the vessel can be established. This implies that a creditor may only exercise a right of retention when there is a certain degree of control over the vessel. The Supreme Court has determined²⁴ that a creditor may only exercise a right of retention over a certain object if he is the keeper of that object (the party that factually has the vessel in its possession but which is not necessarily the legal owner).

A marina operator's right of retention is not a situation specified by law under Article 3:290 CC but based on the general rule of Article 6:52 CC that the obligation to perform may be suspended.

As discussed, a marina operator's claim against a debtor may be in respect of a variety of services: maintenance of the vessel, storage costs or a recourse claim for preventing damage to the environment. In each case, the question is whether in these specific circumstances the marina operator exercises a certain degree of control over the vessel. If the agreement qualifies as a custody agreement, then the answer to the question of whether the vessel is in the possession of the marina operator will in most cases be affirmative. In other cases, there are many circumstances to consider (such as whether the marina operator holds a pair of keys to the vessel). It is by no means certain whether the requirement of exercising control over the vessel is met if the agreement is solely for the purpose of maintenance of the vessel or the renting of storage or mooring space for the vessel.

There are other requirements that have to be met before a right of retention can be exercised. The relevant requirements for the purpose of the article are that there needs to be a sufficient connection between the obligation to return the object and the claim that has not been satisfied.²⁵ Under Dutch law, it is not necessary that both obligations, i.e. the obligation that has not been met and the obligation that has subsequently been suspended, originate from the same contract or agreement. The claim which has not been settled must be recoverable.²⁶ This means that if a payment term was agreed upon, this must have expired before it is possible to withhold the return of the object and exercise the right of retention.

²⁴ Supreme Court judgment of 23 June 1995, NJ 1996, 216, ECLI:NL:HR:1995:ZC1765 and re-affirmed in Supreme Court judgment of 6 February 1998, NJ 1999, 303, ECLI:NL:HR:1998:ZC2571.

²⁵ This follows from the wording of Article 3:290 CC in connection with Article 6:52 CC.

²⁶ This follows from the wording of Article 3:290 CC in connection with Article 6:52 CC. Exceptions to this general rule can be found in Article 6:56 CC, Article 6:80 CC and Article 6:263 CC.

There is a special provision in the Civil Code which allows the creditor to exercise its right of retention against third parties:

Article 3:291 CC: Effect of a right of retention against third parties

1. *The creditor may also invoke his right of retention against third persons who have obtained a right in or to a movable or immovable object after the moment his claim has come into existence and the object has come under his control.*
2. *The creditor may invoke his right of retention only against third persons with an older right in or to the object if his claim results from a contract in relation to the object which the debtor was empowered to conclude or if the creditor had no reason to doubt that the debtor was empowered to enter into such a contract.*

However, these provisions show that additional requirements must be met, such as clarity as to the question of whether the party concluding the agreement was empowered to do so or whether there was any reason to doubt this empowerment. In order to make sure that it is possible to exercise the right of retention, it is always advisable to have certainty in respect of the identity of the contractual counterparty as well as the ownership of the vessel.

THE RIGHT OF RETENTION BASED ON A CONTRACT

As already indicated, parties may in addition to the right of retention based on the Civil Code also agree to a contractual right of retention or other security rights. An example of this can be found in the HISWA general terms and conditions:

ARTICLE 12 - SECURITY RIGHTS DURING REPAIR AND MAINTENANCE

If payment is not made on time, the proprietor has the right to retain the vessel in question together with all the equipment, inventory and other accessories that belong to it until the consumer has paid the whole of the amount due, including the costs involved in right of retention, unless the breach does not justify this retention. The proprietor's right of retention lapses as soon as the consumer brings the dispute before the Disputes Resolution Committee, as described in Article 20, and the Committee has confirmed to the proprietor that the consumer has deposited the amount due with the Committee.

Proprietor in this case means the marina operator, while the consumer is the vessel owner or other party concluding the agreement with the marina operator. The question is whether, in the case that a contractual right of retention was agreed upon, the additional requirements as determined by law and case law would also apply. The answer to this question can be found in the legislative

history of the relevant provisions,²⁷ which states that these provisions of the Civil Code do not apply in the case of a right of retention that was contractually agreed upon. Therefore, many of the complications discussed above can be avoided if a security right and/or right of retention is contractually agreed upon between the parties.

RIGHT OF RETENTION OVER VESSELS²⁸

As indicated, Article 3:290 CC comprises the general rule for the right of retention. There are also special provisions for objects that qualify as means of transportation in a special part of the Civil Code known as “Book 8”. The most important articles to be mentioned here are Articles 8:210a (for seagoing vessels) and 8:820a (for inland vessels). Among other things, these stipulate that in the case of the right of retention over a vessel, the provision that grants the creditor the right of recovery with priority following from the right of retention (Article 3:292 CC) does not apply. A priority right means that in the case of the forced sale or auction of the object, the party that has the right of priority may claim first from the revenue of the forced sale. This claim is satisfied first. In the case of a right of retention on a vessel, however, this rule does not apply. The reasoning behind this is that in respect of vessels, recovery rights with priority follow from either treaties or the law, and these rights cannot be ranked lower than a priority right connected with the right of retention.²⁹

Also noteworthy is Article 8:571 CC,³⁰ which stipulates that when it comes to salvage remuneration the salvor has a right of retention over the vessel and/or object that the assistance was rendered to.

ATTACHMENT OF A VESSEL

If for some reason it is not possible for a marina operator to exercise a right of retention, then arresting the pleasure craft is a very good alternative in the Netherlands. Exercising the right of retention is straightforward, as no permis-

²⁷ See the legislative history: *Memorie van Antwoord II, Parlementaire Geschiedenis, BW Boek 3*, page 882.

²⁸ For further discussion of this topic, see Mak, V., *Rententierecht op zeeschepen (The Right of Retention of Seagoing Vessels)* *Ars Aequi*, 20020596.

²⁹ See the legislative history: *Memorie van Toelichting, 21658, Parlementaire Geschiedenis Boek 8*, page 280.

³⁰ This article is applicable to seagoing vessels. Article 8:1010 CC stipulates that it may also apply to salvage rendered to inland vessels.

sion is needed from a court, and therefore it is always worth considering this possibility first. However, as has been explained, it is necessary that the marina operator exercises a certain degree of control over the vessel, although, as also explained, this criterion is not always met in cases like this. In addition, an arrest may offer more certainty, as the court's involvement also makes it clear that there is permission to effect this measure. In the case of the right of retention, there may be debate about the question of whether the marina operator has rightfully exercised the right of retention. This can be avoided by requesting permission to attach the vessel.

In the Netherlands, no proceedings *in rem* exist; all proceedings are *in personam*, and it is therefore not possible to execute an arrest *in rem*. The general rule is that creditors can attach any asset of the debtor in order to obtain security for a claim, to enforce a judgment previously obtained, or to execute an enforceable title based on an agreement (for instance a mortgage right).

If a judgment or title is already enforceable in the Netherlands, then effecting the attachment is relatively easy and in general only requires the serving by a bailiff of the judgment or title upon the debtor with a final demand for it to comply and meet its obligations within a certain period of time. When this period has elapsed, an attachment can be obtained by the bailiff. If this does not lead to payment or any other satisfactory solution, this may be followed by an auction or forced sale of the objects which have been attached.

Under Dutch procedural law,³¹ it is, however, also possible to obtain an attachment order against the debtor's assets (for instance a vessel or bank accounts) before obtaining a final judgment or award on the merits against the defendant. Such a conservatory attachment to obtain security for a claim can be obtained before proceedings on the merits have even been started, whether in the Netherlands or in any other jurisdiction. Furthermore, it is not necessary that the claim itself is subject to Dutch law and/or jurisdiction.

For conservatory attachments of ships, there may be restrictions on the general rule that a creditor may arrest any asset of its debtor pursuant to the 1952 Arrest Convention, which applies when the vessel to be attached flies the flag of a contracting state. In this case, an attachment is only possible if the claim at hand qualifies as a maritime claim. This will be discussed in more detail below.

³¹ The procedure to obtain leave for a conservatory attachment is determined by the Code of Civil Procedure, Article 700 et seq. Many of the provisions that apply to attachments after an enforceable title against the debtor has been obtained (a so-called executorial attachment), and which can be found in Article 439 CCP et seq., also apply in the case of a conservatory attachment.

To obtain leave to attach a vessel, one must file a petition with the court where the vessel is situated (or expected if the vessel is still to arrive in port). In the case of an attachment of a vessel, some general rules do not apply. For example, the party that files the request to obtain leave for an attachment does not need to state that there are grounds to assume that the assets may disappear and that therefore an attachment is necessary in order to safeguard its right. At the same time, some special rules do apply, such as the rule that the request may be filed with the court where the vessel is expected to arrive. The reason for this is the fact that vessels may move and disappear quickly, and usually do not stay in port for a long time. See Article 728 CCP.

Although it is quite easy to obtain leave, certain items must be covered in the petition³² requesting leave to attach. First of all, the party applying for the attachment must explain and substantiate the basis of the claim. For instance, when the claim arises out of a contract of carriage, a copy of the contract and/or the bill of lading must be submitted to the court together with the application. If the claim is based on unpaid invoices, then any claim/demand notes that were sent must be submitted to the court. Finally, any defence of the debtor against the claim that is known by the applicant must be substantiated to the court.

Depending on the type of arrest, certain other requirements must also be met. For instance, the court sometimes needs to be informed of why the applicant opts to arrest these specific assets. The court in principle applies the rule that the arrest be made in the least burdensome manner unless the applicant makes clear why these specific assets need to be arrested. When dealing with the attachment of a vessel, this usually does not constitute a problem.

³² The procedure to obtain leave and effect an attachment cannot only be found in the CCP but also in a document published annually by a body of judges, representatives of all the first instance and appeal courts in the Netherlands, which is called the *beslagsyllabus*. It is published on the website of the courts in the Netherlands: see <https://www.rechtspraak.nl/Voor-advocaten-en-juristen/Reglementen-procedures-en-formulieren/Civiel/Handelsrecht/Paginas/Beslagsyllabus.aspx>. It contains recommendations ("best practices") from the courts on how to draft an arrest petition, listing which information should be included in the petition for all the various attachment possibilities that exist, in order to make sure that leave is granted. It also contains an overview of the relevant case law. The *beslagsyllabus* is not a formal source of law, but it is referred to in judgments, and if later on in proceedings it becomes clear the party requesting leave has not complied with the *beslagsyllabus* and insufficient and/or incorrect information has been provided, this may be sanctioned based on Article 21 CCP. The document also contains a tool to determine the total amount for which leave may be granted (the sum due increased by approximately 30 percent for interest and costs).

The attachment application is a so-called *ex parte* application. This means that the debtor is not heard by the court upon such an application. The applicant generally has, to a certain extent, the benefit of the doubt when seeking leave for the attachment. If the applicant has an arguable case, both with regard to liability and the quantum of the claim, the court is likely to grant leave as requested. The court will normally only apply a marginal test of whether the claim as stated could arguably qualify as grounds for the attachment of assets. This means that if the facts as stated by the applicant are later found to be incorrect or incomplete, the attachment will immediately be lifted because of the failure to comply with one of the fundamental rules of the CCP³³: the duty to present to the court all available information that may be of relevance.

The application must mention all proceedings that are pending, either in the Netherlands or abroad, and that may be relevant for the judge's assessment of the attachment application. If proceedings on the merits are already pending, either in the Netherlands or abroad, then this merely needs to be mentioned. If proceedings are not yet pending, Dutch law prescribes³⁴ that the court determine a certain period of time within which such proceedings on the merits must be initiated. As a general rule, a period of fourteen days will be granted by the court from the date the first attachment is made. The CCP stipulates that the minimum period is eight days. When a longer period is required, this must be requested specifically and the request must be substantiated. Usually courts allow a party a longer period when foreign parties are involved or when there is chance that the parties could reach a settlement before starting proceedings on the merits. It is possible to ask the court for an extension of this period, which may also be repeated.³⁵ This request is also an *ex parte* application and is usually granted, at least the first extension applied for is.

The question of whether or not proceedings are instituted and pending within the period set by the court is determined on the basis of the procedural law of the court or arbitration institute that has jurisdiction over the merits. For instance, if the claim for which the attachment has been made is based on an agreement which contains a jurisdiction clause electing the High Court in London, then the Civil Procedure Rules of England and Wales determine whether

³³ This is stipulated in Article 21 CCP.

³⁴ Article 700(3) CCP stipulates that, unless proceedings on the merits are already pending, leave is granted under the condition that proceedings will be initiated within a certain period of time determined by the court but not sooner than eight days after the attachment has been made.

³⁵ The procedure to request an extension is also stipulated in the CCP in Article 700(3).

or not proceedings are pending and not the Dutch CCP. The requirements that have to be met may therefore vary.³⁶

The Civil Code³⁷ mentions the possibility of the court ordering the applicant to put up countersecurity, although this provision is rarely applied. The general rule is that it is not necessary to put up security and/or make a payment to the court except for court fees.

If the terms set by the court to start proceedings on the merits are not met, the attachment will become null and void and liability may ensue from this.

When urgency so dictates, for instance because a vessel is due to leave port, an application may also be filed with the court outside office hours, and it is usually possible, certainly when filing an application with the specialized Maritime Chamber of the Rotterdam court, to obtain leave and attach a vessel within a couple of hours.

When leave for the attachment is granted, the bailiff will de facto execute the attachment. The only thing the bailiff needs is a copy of the leave for the attachment signed by the judge. The majority of attachments on vessels are lifted voluntarily before the proceedings on the merits have been initiated, usually because the debtor offers to provide security for the claim. The party which has made the attachment is obliged to lift it if sufficient security is offered. What constitutes "sufficient security" is assessed on the basis of Article 6:51 CC, with one of the requirements being that the beneficiary must be able to demand payment under the guarantee without restrictions. Security based on assets or with a guarantor situated abroad, therefore, does not have to be accepted. In the case of an attachment on a vessel, the guarantor is usually a Dutch bank or underwriter or one of the P&I Clubs that are members of the International Group of Protection & Indemnity Clubs.³⁸ The Rotterdam Guarantee Form 2008 (RGF 2008)³⁹ is

³⁶ Article 32 of Council Regulation (EC) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Article 16 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters recognize two different possibilities for a court. Either the document instituting proceedings is lodged with the court prior to being served or the document is served before being lodged with the court.

³⁷ Article 701 CCP stipulates that the judge may give leave to attach an asset under the condition that security will be put up for any damage that may occur due to the arrest.

³⁸ The members and further information can be found at <https://www.igpandi.org/>.

³⁹ The current standard form of the RGF 2008 in Dutch, as well as in English, can be found on the website of the Dutch Association for Transport Law (NVV): <https://www.vervoerrecht.nl/en/documents>. The website also contains further background information

broadly accepted in the Netherlands but also in other countries as the standard wording for a guarantee, and contains all the conditions and requirements as developed in case law over recent years.⁴⁰

If it is not possible to reach a solution amicably, then the attachment may be followed by summary proceedings. In these proceedings, the vessel owner may request that the court lift the attachment. The general rule (Article 705 CCP) is that an attachment will be lifted if it is *prima facie* established that the claim is unjust, if certain requirements have not been met, for instance if not all relevant information was provided to the court or if the information provided was incorrect, if the attachment is unnecessary, or if sufficient surety is offered. If it later becomes apparent that the claim for which the vessel was attached was unfounded, the party that has attached the vessel is liable for damage caused by the attachment (such as delays and/or berthing costs). This strict liability⁴¹ exists because of the fact that it is quite easy to arrest or attach assets and because of the *ex parte* character of the proceedings. This way, the balance is restored in some form. However, it should also be noted that it does not happen very often that a party which has made an arrest that is found unjust is ordered to pay damages.

MARINA OPERATOR CLAIMS AS MARITIME CLAIMS

In the case of the attachment of a vessel, the question of whether a Dutch court will grant permission sometimes first of all needs to be assessed on the basis of the 1952 Arrest Convention. This is the case if the vessel at hand flies the flag of a contracting state to the Convention. The most important question then is whether the claim for which permission to attach is sought qualifies as a

and commentaries as to how the form has been developed and evolved over the years. The members of the Committee on the Rotterdam Guarantee Form are also mentioned on the website.

⁴⁰ Another standard form that is often used is the model developed by the Dutch Banking Association (NVB). See https://www.nvb.nl/Media/document/001282_beslaggarantie-en.pdf. The NVB model is less favorable for the creditor, since it does not contain the provision that it is possible to bring legal proceedings against the guarantor if the debtor is declared bankrupt or granted a suspension of payment, if a statutory debt rescheduling scheme has been implemented regarding the debtor, or the debtor is in liquidation or liquidated, in order to have the indebtedness of the debtor ascertained by the court. For an answer to the question of whether the RGF 2008 or the NVB model should be accepted, see the Court of Arnhem judgment of 17 April 1996, ECLI:NL:RBARN:1996:AJ2975, S&S 1997, 7.

⁴¹ That a party that has effected an attachment that later turns out to be unjust (for instance because the claim was denied in court) is under strict liability for the damage caused through the attachment follows from the Dutch Supreme Court decision of 13 January 1995: ECLI:NL:HR:1995:ZC1608; NJ 1997/366. See especially paragraph 4.2.

so-called maritime claim, i.e. one of the claims listed in Article 1(a) to (q) of the 1952 Arrest Convention.⁴²

As discussed, marina operators usually offer a wide variety of services to vessels which may qualify as an agreement for the maintenance of the vessel, for works to be carried out, for the hire or rental of a berthing place or as an agreement for custody over the vessel, or as a so-called mixed agreement containing elements of all of these other types of agreement. The fee paid for a berthing place is, however, not mentioned in the list of claims of Article 1(a) to (q) of the 1952 Arrest Convention. The categories of claims listed under (k): *goods and materials wherever supplied to a ship for her operation or maintenance*; and (l) *construction, repair or equipment of any ship or dock charges and dues*, however, do cover many of the services provided and therefore also claims by a marina operator, which makes an attachment possible.

If the vessel flies the flag of a contracting state and the claim does not qualify as one of the claims listed in the 1952 Arrest Convention, then the court cannot grant permission. For this reason, it is also important to carefully consider the way an agreement between a marina operator and a vessel owner is worded. This may turn out to be very relevant when it comes down to enforcement.

If the 1952 Arrest Convention does not apply, the possibilities of attaching a vessel under Dutch law are much broader. In these cases, an attachment is possible for every claim against the debtor without the requirement that the claim needs to qualify as a maritime claim.

CONSIDERATIONS RELATED TO THE IDENTITY OF THE DEBTOR

Issues may arise if the vessel owner is not the party who concluded the agreement with the marina operator, which is not uncommon. In particular,

⁴² Article 1 reads as follows: “Maritime Claim” means a claim arising out of one or more of the following: (a) damage caused by any ship either in collision or otherwise; (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship; (c) salvage; (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise; (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise; (f) loss of or damage to goods including baggage carried in any ship; (g) general average; (h) bottomry; (i) towage; (j) pilotage; (k) goods or materials wherever supplied to a ship for her operation or maintenance; (l) construction, repair or equipment of any ship or dock charges and dues; (m) wages of masters, officers, or crew; (n) master’s disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner; (o) disputes as to the title to or ownership of any ship; (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship; (q) the mortgage or hypothecation of any ship.

larger yachts are managed or operated through a separate company which, as a part of its tasks, arranges for the maintenance and storage of the vessel. It is not uncommon that yachts (for tax purposes) are owned by a limited liability company and on paper are used for professional purposes (public relations, i.e. sailing trips with clients) but in reality are only used by the private person behind the company who then also concludes the agreement with the marina operator.⁴³ This means that the marina operator's debtor and the vessel owner are not necessarily the same, and the vessel is not to be regarded as an asset of the debtor. This makes it impossible to attach the vessel, since only the debtor's assets may be arrested.

CONSIDERATIONS RELATED TO THE APPLICABLE LAW

Many of the pleasure craft sailing in Dutch waters (especially during the summer) are owned by non-Dutch owners or may be registered outside the Netherlands. Dutch yards are well known worldwide for their state-of-the-art yacht-building capacities. It is therefore likely that questions will arise as to which law to apply when seeking enforcement of a claim, for instance whether an attachment is possible or when assessing whether a right of retention exists and may be exercised. In the case of an attachment, the question of which law applies is divided into two separate questions. A request to obtain permission to attach a vessel is determined on the basis of the 1952 Arrest Convention (in the case of a vessel flying the flag of a contracting state) and the Dutch procedural law. The claim itself may be subject to a different legal system, for instance as determined by the choice of law clause in the concluded agreement. If no choice of law clause is included and the parties to the agreement have different nationalities, the question of which law applies needs to be assessed on the basis of international private law, for instance the Rome I Regulation⁴⁴ for claims based on contracts.

The right of retention, however, falls outside the scope of the application of the Rome I Regulation because, although the right itself may arise from a con-

⁴³ The question of whether a natural person represents a company with limited liability that owns a yacht at the time this person enters into an agreement for the maintenance of a vessel which includes hoisting the vessel out of the water was one of the issues decided by the Court of Amsterdam judgment of 5 April 2017, ECLI:NL:RBNHO:2017:4193, S&S 2017, 88.

⁴⁴ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

tract, it is also or solely a property right.⁴⁵ As discussed above, rights *in rem* do not exist in Dutch law and all claims and proceedings are *in personam*.

There is a special section in the Civil Code⁴⁶ that contains international private law provisions regarding the law applicable to the right of retention. Article 10:129 of this section stipulates that the existence and extent of a right of retention are subject to the law applicable to the legal relationship that the right of retention is based upon (*lex causae*). The right may only be exercised if it is in accordance with the law of the state where the object is situated (*lex rei sitae*). This means that the laws of two countries may be applicable and relevant. Of course, when looking at the right of retention exercised by Dutch marina operators, it is likely that only Dutch law will apply, as the yacht will be situated in the Netherlands and the contract between the yacht owner and the marina operator will in most cases be subject to Dutch law.⁴⁷

THE POSSIBILITY OF EFFECTING CONSERVATORY MEASURES OUTSIDE THE NETHERLANDS

With so many foreign yacht owners visiting the Netherlands during the summer and many buyers from abroad, it is to be expected that the assets of a debtor, including vessels, are no longer situated in the Netherlands but elsewhere in the European Union (EU). The question then arises as to whether it is also possible to attach a vessel and/or other assets outside the Netherlands on the basis of a leave to attach obtained from a court in the Netherlands. In other words: can a decision from a court granting leave to attach be exported to other EU Member States?

The Brussels I Regulation⁴⁸ imposes uniform rules throughout the EU regarding international jurisdiction and the recognition and enforcement of civil and commercial judgments. Previously, *ex parte* provisional measures such as the Dutch attachment order fell outside the scope of Chapter III of the Brussels I Regulation. On 10 January 2015, the revised Brussels I Regulation⁴⁹ entered into

⁴⁵ Supreme Court judgment of 7 January 2000, NJ 2001, 406, ECLI:HR:2001:AA4123.

⁴⁶ This is book 10 of the Civil Code, which has been in force since 1 January 2012.

⁴⁷ Article 22 of the HISWA general terms and conditions stipulates that Dutch law is applicable in all disputes relating to a contract unless another national law is applicable on the grounds of mandatory rules.

⁴⁸ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

⁴⁹ Council Regulation (EC) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

force, introducing an important change and the next step in respect of judicial cooperation and free circulation of judgments in the Union, whereby it is now possible to enforce judgments without a separate procedure for recognition and enforceability prior to enforcement.

Article 2(a) of the revised Brussels I Regulation stipulates that: *“for the purpose of Chapter III, judgment includes provisional, including protective measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement.”*

Preamble 26 reads as follows: *“Mutual trust in the administration of justice in the Union justifies the principle that judgments given in a Member State should be recognised in all Member States without the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed.”*

In addition, in Preamble 33 of the Regulation it is stated that: *“Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation.”*

These objectives are reflected in Articles 39 and 40 of the revised Brussels I Regulation. As a result, an enforceable judgment obtained in one Member State can immediately be enforced in all other Member States. This also makes it possible to enforce a Dutch attachment order (of course, the same applies for an attachment order obtained in any other Member State) throughout the European Union.⁵⁰

There are, however, certain requirements that have to be met. First, Dutch courts must have jurisdiction on the merits of the case, for example when the parties involved have agreed on a jurisdiction clause appointing a Dutch court as the court with exclusive jurisdiction. As already discussed, in cases where a Dutch marina operator wishes to attach a vessel because the obligations arising from the agreement between the yacht owner and marina operator have not

⁵⁰ The possibility discussed here should be distinguished from the possibilities for cross-border conservatory attachments based on Council Regulation (EC) No 655/2014 of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

been met, it is likely that this agreement is subject to Dutch law. It is also likely that such an agreement contains a jurisdiction clause electing a Dutch court, although this is not always the case with shipbuilding contracts. Secondly, the order must be served upon the debtor prior to the attachment, together with a translation thereof.

The procedure to obtain leave for a cross-border attachment is the same as when applying for a Dutch attachment. The only exception is that one needs to specifically mention that the vessel may be situated outside the Netherlands, indicate where in the EU it is expected that the vessel is situated, and explicitly request leave to enforce the attachment in these countries as well. The regulation contains an example of the certificate⁵¹ that needs to be issued by the court to make it possible to enforce a decision throughout the EU. A request to issue such a certificate must be lodged with the court pursuant to Article 53 of the revised Brussels I Regulation.

The documents must be served upon the debtor together with the translations. Following this, the attachment can be carried out⁵² by a local officer with the authority to effect attachments on the basis of the leave obtained in another EU country. The requirements and/or rules of the country where the attachment is effected do not apply. This means that if the conditions in one Member State are more favourable than in another Member State, for instance that no counter security is required, the revised Brussels I Regulation gives parties the possibility to rely on and thus export these favourable conditions even if the law of the Member State where the enforcement is sought does not contain similar provisions allowing for such measures.

The possibility has been tried and tested in the Netherlands. The first case where the court was requested to issue an attachment order for a vessel outside the Netherlands is known as the NAVIN 24 case.⁵³ In this case, the Rotterdam court granted leave to attach a vessel in Austria and/or Germany for a claim for unpaid hire on the basis of a time charter subject to Dutch law and a jurisdiction

⁵¹ The model certificate can be found in Annex 1 of the revised Brussels I Regulation.

⁵² Preamble 32 of the revised Brussels I Regulation states that the certificate, if necessary accompanied by the judgment, should be served on the person within a reasonable time before the first enforcement measure. Article 43 further determines which requirements need to be met when serving the certificate.

⁵³ Court of Rotterdam decision of 12 March 2015, ECLI:NL:RBROT:2015:3395, NTHR 2015, 5, p. 274. The case has been discussed by Mr. Dr. Ing. N. J. Margetson, *Nederlands verlot tot het leggen van conservatoir scheepsbeslag in een ander land* (Dutch leave to attach a vessel in another country), *Nederlands Tijdschrift voor Handelsrecht* 2016-4.

clause appointing the Rotterdam court as the court having exclusive jurisdiction.

Another (unpublished) case involved the attachment of a yacht in Croatia under a sale and purchase agreement containing a clause determining that the court in Amsterdam had exclusive jurisdiction to decide all matters arising out of the agreement. Leave was granted by the Amsterdam court, and subsequently the attachment was effected in Croatia.

The procedure for enforcement is determined by the law of the Member State where enforcement is sought unless otherwise provided for in the Regulation. Questions may arise when an attachment needs to be lifted and/or security is offered, for instance which law determines the requirements for the lifting of the attachment. In the Netherlands, the attachment is lifted as soon as the bailiff is instructed to lift the arrest. No formal requirements exist. In other countries, a court order is needed to lift an arrest. These are legal practicalities that have not yet been resolved but which will obviously be determined by the judge presiding over the matter as soon as problems arise, most likely by the court that has given the permission to effect the attachment and which also has jurisdiction on the merits.

Although the examples discussed above only focus on the Dutch perspective, it is clearly shown that the revised Brussels I Regulation offers all kinds of new possibilities for co-operation at the European level in respect of attachment and preliminary measures. What is possible in the Netherlands can also be applied in other EU jurisdictions. The options therefore appear to be limitless and certainly without borders.

CONCLUSION

Although it would appear that retention is the most straightforward way to pursue a claim, in most cases an attachment is the more effective remedy, providing for more certainty for the claimant and a better possibility of obtaining security. In the case of the right of retention, questions may arise as to whether the claimant indeed exercised the necessary control over the vessel and whether the requirement was met of a sufficient connection between the obligation to return the vessel and the claim. When the agreement between the marina operator and the claimant is solely for the purpose of maintenance of the vessel or the renting of storage or berthing space for the vessel, it is by no means certain that both requirements have been met. Issues that may constitute a problem in respect of exercising a right of retention may be easily avoided by including the

right of retention in the agreement between the marina operator and the vessel owner, thereby excluding the additional requirements based on the Civil Code. Problems may also be avoided through carefully drafting the agreement and making it absolutely clear that the marina operator exercises the necessary level of control over the vessel in order to be able to exercise the right of retention.

A good alternative to the right of retention is attachment of the vessel. An attachment requires the involvement of the court in order to obtain permission to attach and also the involvement of a bailiff in order to effect the attachment, but the procedure for both is relatively easy, as it is also a so-called *ex parte* procedure that does not involve the debtor, and the courts as well as the bailiff are available on a 24/7 basis. Once the attachment is made, the claimant has the benefit of the doubt and the threshold for the attachment to be lifted is high. In most cases, a debtor will offer to put up security after an attachment has been made.

An attachment has the additional benefit that all the assets of the debtor may be included in the attachment and not only the vessel that is the subject of the claim. The revised Brussels I Regulation furthermore provides for the attachment to be effected outside of the Netherlands throughout the EU, making it a very interesting remedy in cases involving a moveable object such as a vessel.

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Sažetak:

**OSIGURANJE TRAZBINA MARINE
IZ PERSPEKTIVE NIZOZEMSKOG PRAVA**

Članak se bavi veoma specifičnim aspektom pomorskog prava, tj. pravnim mjerama koje po nizozemskom pravu omogućuju marini da ostvari svoju ugovornu ili izvanugovornu tražbinu protiv vlasnika plovila. Ovo nije jednostavno pitanje jer uključuje niz različitih područja, kao što su pomorsko pravo, ugovorno pravo, ovršno pravo, Međunarodna konvencija za izjednačavanje nekih pravila o privremenom zaustavljanju pomorskih brodova iz 1952. i pravo retencije. Nakon općeg uvoda o rekreacijskoj plovidbi i marinama u Nizozemskoj te uvodnih razmatranja o primjenjivom pravnom okviru, daje se pregled mogućih pravnih rješenja. Diskutira se o različitim pravnim pretpostavkama, s posebnim fokusom na ostvarenje tražbina marine protiv vlasnika plovila.

Posebno pitanje javlja se u vezi tražbine marine protiv vlasnika plovila zbog ponekad nejasne kvalifikacije ugovora na temelju kojeg tražbina nastaje. Pitanje je važno jer o kvalifikaciji ugovora, točnije o pravima i obvezama ugovornih strana ovisi koje će pravne mjere biti na raspolaganju vjerovniku. Pravo retencije postoji pod uvjetom da vjerovnik ima određeni stupanj fizičke vlasti nad plovilom budući da je retencija pravo na pridržaj plovila u posjedu. Ovo ponekad predstavlja problem u kontekstu tražbina marine, a to se pitanje pojašnjava u radu. Obrađuju se i pojedine odredbe Građanskog zakonika koje uređuju pravo retencije s posebnim osvrtom na retenciju plovila. Kako za ostvarivanje prava na retenciju nije potrebno posredstvo suda, ova mjera je često najjednostavnije rješenje za marinu.

Međutim, ako nije jasno postoji li pravo retencije ili može li se ono ostvarivati, postoji druga opcija za osiguranje tražbine, a to je privremena mjera osiguranja po nizozemskom pravu. Privremenu mjeru osiguranja moguće je u Nizozemskoj ishoditi i primijeniti relativno lako. Postupak je brz i jednostavan, što nizozemsku jurisdikciju čini idealnom za takvo osiguranje tražbina.

U radu se razmatra i pitanje identiteta dužnika, kao i pitanje mjerodavnog prava, s obzirom da ta pitanja mogu predstavljati prepreku za osiguranje i ovrhu tražbine.

U prošlosti je bilo moguće ostvariti privremenu mjeru osiguranja ishodu pred nizozemskim sudom samo u okviru nizozemske jurisdikcije. Drugim riječima, za ostvarenje privremene mjere osiguranja na brodu bilo je nužno da se brod nalazi u Nizozemskoj (ili se očekuje njegov skori dolazak u Nizozemsku) kako bi se ishodilo rješenje suda o privremenoj mjeri zaustavljanja broda. Međutim, Uredba Bruxelles I bis dopušta mo-

gućnost "izvoza" odluke suda u bilo koju državu članicu EU-a. Ovo je moguće čak i kada se radi o tzv. postupku *ex parte*, tj. o odluci koju sud donosi u postupku u kojem je stranka samo predlagatelj mjere osiguranja. Druga strana nije upoznata s postojanjem sudskog postupka sve dok se privremena mjera ne ostvari. Kako su brodovi pokretne stvari, opisana mogućnost prekogranične primjene sudskih odluka o privremenim mjerama osiguranja u okviru EU-a može dodatno olakšati ispunjenje tražbina marina, pa je stoga predmet rasprave u ovom članku.

Ključne riječi: osiguranje pomorskih tražbina; marina; nizozemsko pravo; privremena mjera zaustavljanja broda; retencija.