

INLAND TRANSPORT COMMITTEE

Working Party on the Transport of
Dangerous Goods
(Seventy-first session,
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**CRTD Convention – ECE ITC wp.15 05-11 November Geneva
Financial limits on Liability and Compensation**

Submission on the limits of financial liability

Transmitted by the Government of Netherlands

1. Introduction

1.1 One of the major concerns as regards a possible accession by the Netherlands to the CRTD Convention¹, relates to the issue of financial limits of liability and insurance. In this regard the Netherlands considers it to be very important that the liability and compensation regime of the draft Protocol is compatible with the current or possible capacity on the insurance market whereby such insurance will be available against reasonable costs.

1.2 Because there will be direct effects of also the insurance obligations to the interests of the relevant transporters and also in order to avoid inconsistency and undesirable side effects, it seems important to revisit the limits which were introduced in the CRTD Convention and also to take into account various considerations that at the moment take place relating to various international instruments on transport liability.

1.5 As regards insurance obligations limits are established because of the restricted capacity of the insurance market and to guarantee that the amounts being mentioned will in fact be available when needed. It is therefore incumbent to take the amounts of the specific limits for the various modes of the

¹ CRTD Convention is not in force but is considered as guidance for unification of liability for damage caused during carriage of dangerous goods by road, rail or inland navigation vessels. The convention was adopted in the framework of the ECE Inland transport Committee (United Nations) and is open for ratification by all States. The most important reason why the convention is not in force (yet) seems to be the height of the proposed limits of liability. There will be a thorough consideration of the reasons for the not entering into force of the CRTD Convention at the upcoming session of the UN/ECE/ITC wp. 15 in November 2001.

CRTD Convention into account for a possible revision with a view to reach successful conditions for that liability regime.

1.6 In the following an inventory is given of the (inter-)national limits used for various modes of transport in the Netherlands, which are (in some occasions) partly based on the current level of limits in the CRTD Convention but are also sometimes explicitly deviating from these limits. By doing so it also gives an indication to what level the limits of liability can be concluded in a possible revision of the CRTD Convention. More in particular it takes into account the available insurance capacity on a reasonable cost basis for the relevant industry. As Dutch practice has showed this can vary as has in this submission been pointed out for the relevant modes of transport. The reasons why the regimes differ can be sought in the structure of the relevant insurance market (P&I Clubs or regular insurance companies) and the homogeneousness of the group.

2. Road transport

2.1 The limits as provided for in the CRTD Convention regarding road transport are set at 18 million SDR for personal injury and 12 million SDR for property and environmental damage (total 30 million SDR). Although these amounts have in the absence of an applicable scheme which is in force been used as guidance for inserting new limits in the Dutch Civil Code, it appeared after long consultations and negotiations with all parties involved (road branch organizations, insurers, environmental organizations and academic professionals) that only limits of liability could be inserted in Book 8:1218 of the Dutch Civil Code according to which a maximum of 7.2 million SDR is available as regards personal injury and 4.8 million SDR for property- and environmental damage. Furthermore these amounts have been used to obtain also a limit up to which these liability maxima need to be safeguarded by compulsory insurance obligations (Wet Aansprakelijkheid Motorrijtuigen - WAM) which after another round of consultations and negotiations with all involved is currently set at 6.25 million SDR for motor vehicles. This is the maximum available at the current market in the Netherlands.

2.2 It is apparent that the present national limits which are in force are substantially lower than the flat maximum amount of 30 million SDR which was concluded in the CRTD Convention. This amount has also been tried in first instance as guidance for also national limits. As stated before the main reason why the convention is not (yet) in force, is because of the therein mentioned limits are generally to be considered to be too high. It was also concluded in a comprehensive dialogue with insurers in the Netherlands that it will be impossible to take out insure cover of an amount higher than appr. 6.25

million SDR (15 million guilders). Further international discussions (also with insurers) are necessary before amounts even in this direction can be established. Because the maximum amounts will vary substantially per mode of transport it is recommended, as mentioned in the introduction, to introduce different levels of liability for the various modes of transport. As far as road transport is concerned a flat limit of 6.25 million SDR is the maximum amount obtainable under the present market conditions up till the moment.

3. Rail

3.1 The current limits of the CRTD Convention as regards rail transport are 18million SDR's for personal injury and 12 million SDR's for property- and environmental damage (total 30 million SDR). These limits have also been inserted in Book 8:1670 of the Dutch Civil Code.

3.2 The CRTD limits seem not to create difficulties since these are in force yet for rail transport on a national level (however in case of commercial small lines these limits have been questioned) .

4. Inland navigation

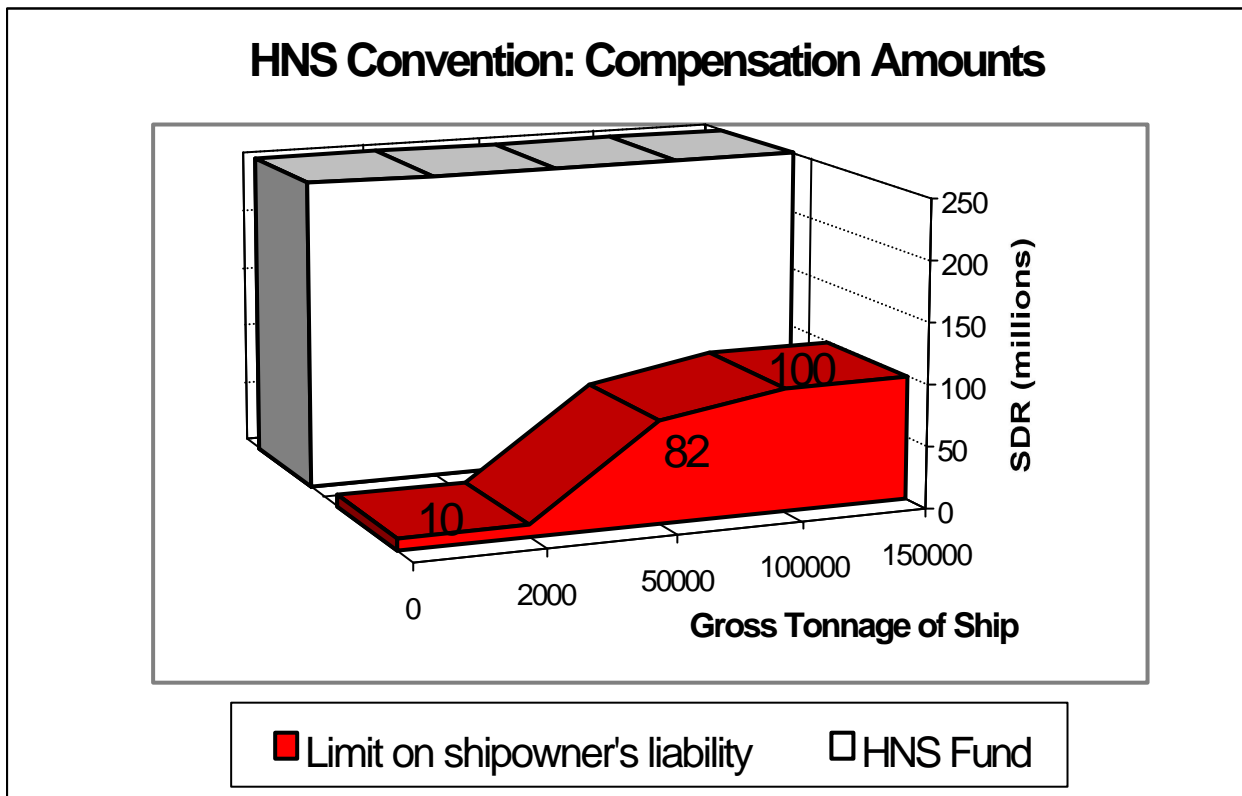
4.1 Although the current limits of the CRTD Convention as regards inland navigation are set at 8 million SDR for personal injury and 7 million SDR property- and environmental damage (total 15 million SDR), Book 8:1060 of the Dutch Civil Code provides for a maximum amount depending on the gross tonnage of the vessel in the range from 1-4 million SDR for personal injury and 750 000-3 million SDR for property- and environmental damage

4.2 For inland navigation vessels it is even more true what has been considered in relation to road transport. Therefore it seems to necessary in order to create more clarity about the prospects of entering into force of the CRTD Convention, to take these national levels of limitation into account for including within a revised version of the CRTD Convention.

4.3 As regards inland navigation it is also important to take into consideration the 1996 Convention on Liability and Compensation for damage caused in connection with the Maritime Transport of Hazardous and Noxious Substances (HNS Convention) which will be applicable to inland navigation vessels that will also be seagoing. The limits of shipowner liability of this Convention reach from 10 to

100 million SDR and are based as in the case of the CLC on the maximum available insurance capacity. However, additional compensation may be available from the HNS Fund if these limits are not sufficient.

Compensation amounts HNS Convention (Seatransport Dangerous Goods)



4.4 As long as the here abovementioned HNS Convention will not be in force the limits relating to the liability of the shipowner will be regulated by the 1976 LLMC (Limitation Convention) and by any amendments thereto that will have entered into force. Currently these limits reach from 167,000-40 million SDR (8:750 Dutch Civil Code).

4.4 As a consequence and in order to provide for consistency the limits of the CRTD Convention may for maritime transport not go beyond this level. The present limits of the CRTD Convention are even in case of maritime transportation too high since for example small seagoing ships might have a far lower LLMC limit than the 10 million SDR in case of a 1,000-10,000 ton shipment.

Ministry of Transport/DG Freight Transport/Legal/dB/051001