The Netherlands: Development of Carriers’ Liability Legislation and Policy

Exploring the effects of carrier sanctions regimes on the relationship between government agencies, carriers and passengers and understanding the role of legal instruments and their implementation on the social state of affairs (Griffiths, 2003), as discussed in Chapter 1, requires an examination of the contents of the carrier sanctions provisions in the Dutch and British legal systems. Therefore, the following three chapters focus on these legal instruments. They provide an overview of the legal developments in the Netherlands (this chapter), and the UK (Chapter 4) concerning carrier responsibility, and discuss the most important considerations of the Dutch and British government in developing these measures. Chapter 5 will then discuss the legal developments within the European Union.

3.1 Introduction

In 1965, obligations for carriers in immigration control were codified in law in the Netherlands for the first time. This does not mean that private carriers had not been involved in the immigration process before that time; the introductory chapter mentioned a regional statute of 1634 under which carriers could be fined for carrying ‘vagabonds’. Another example was that in 1949, shipping companies where pressured by the Dutch government to decrease the number of ships travelling between Indonesia and the Netherlands in order to halt the number of people travelling from the former colony (Muus, 2004: 266).1 In 1954, the Aliens Circular, the official instructions from the Ministry of Justice to the Aliens Police, prescribed that stowaways should leave the country on the same ship on which they had arrived and that they could be detained until re-transportation at the expense of the shipping company or the ship’s captain.2

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1 Muus notes, although he does not recount the details, that the Dutch government was unsuccessful in its attempts (Muus, 2004).
The possibility to use carriers for immigration control purposes had, thus, not remained unnoticed in the Netherlands, but their involvement was incidental. Obligations for carriers became more structured and were laid down in legislation with the Dutch Aliens Act 1965. Throughout the years, with amendments to the migration legislation, new provisions on carriers were introduced and already existing ones were expanded, making carriers a structural part of immigration control. This structural contribution of carriers to the immigration control process has been codified in the Aliens Act and secondary legislation: the Aliens Decree, Aliens Regulation and the Aliens Circular. In this layered system, four duties for carriers are discerned:

- The duty to ensure that passengers who lack the proper documents for border crossing will not be transported to the Netherlands;
- The duty to provide transcripts or copies of passengers’ documents;
- The duty to provide, before departure, passenger data to the immigration authorities in the Netherlands;
- The duty to re-transport passengers who are refused entry at the border.

Carriers that do not act in conformity with these duties can be liable to various criminal and civil sanctions. This chapter provides an overview of these various duties and the sanctions attached to them. It discusses their development from 1965 onwards, and the considerations of the Dutch government in developing these measures.

3.2 Carrier Obligations in the Aliens Act 1965 and Subsequent Developments

The Aliens Act of 1965 codified carriers’ obligations in immigration control for the first time. This Aliens Act obliged immigrants, who had been refused entry to the territory of the Netherlands, to leave the country in compliance with a border officer’s directions. Immigrants who had been refused entry and who had come to the Netherlands by ship or aircraft could be expelled by being placed on board a ship or aircraft belonging to the same carrier. This carrier

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3 The re-transportation duty, the duty longest in existence, can be characterised both as a duty but also as a sanction – since it is a direct consequence of transporting passengers who do not fulfil the requirements for entry into the Netherlands. Although it is mentioned here as a duty, it will be discussed in more detail in the paragraph dealing with sanctions.


5 Article 7(2) Aliens Act 1965.