CHAPTER 10

The Consequences of Involving Private Carriers in Immigration Control for the Relationship between State, Carriers and Passengers

10.1 Introduction

This study is based on the socio-legal premise that ‘law in the books’ does not necessarily directly correspond to ‘law in action’, that law can function in a different way than it was designed to do and that it can have, as well as the desired effects, undesired or unexpected effects. The aim of this research has been to gain a better understanding of the law in the books and the law in practice with regard to the involvement of private carriers in immigration control. To this end I have studied carrier sanctions policies in the Netherlands and the UK. I have not only looked at legislative developments in this area but, through a broader lens, also at the implementation of these policies in practice and at the actions of and the interaction between the immigration authorities, private carriers and individual passengers when confronted with these policies. These parties are connected through mutual relationships which have been depicted, simplified, as a triangle in the first chapter. With this socio-legal research, I have searched for answers to the main research question introduced in the first chapter:

What have been the consequences of involving private carriers in the area of immigration control for the development of the carrier sanctions regimes in the Netherlands and the United Kingdom and for the mutual relationships between these states, carriers and passengers?

In this final chapter, I will, first, discuss the development of the policies obliging carriers to take on immigration-related tasks in the Netherlands and the UK. I will then discuss the relationship between the carriers, the state and the passengers and the interaction with carrier sanctioning measures.
10.2 The Development of Carrier Sanctions Policies in the Netherlands and the United Kingdom

10.2.1 Differences and Similarities in Legal Design in the Netherlands and the UK

The discussion of legislative developments in the Netherlands and the UK revealed similarities and differences in legislation and practice in these states, both in the development of these measures and in their implementation. Both the Netherlands and the UK are bound by the EU Carrier Sanctions Directive and the API Directive on advanced passenger information and both states took part in the negotiations on those directives. Through these directives, these states share a common European legislative framework on the use of carrier sanctions for private carriers who transport undocumented passengers. This European framework, however, leaves much room for individual states to develop and implement their own specific measures, and significant differences exist between the regimes in the Netherlands and the UK.

One of the main differences between the Netherlands and the UK is the scope of the regulations. In the Netherlands, sanctions are only imposed on airlines, since it has no long external Schengen land borders and the number of inadmissible passengers in the port of Rotterdam is negligible. The UK, government, however, targets multiple branches of transport with these measures. It imposes responsibilities and sanctions on airlines, shipping companies – mainly ferries – road transporters and rail companies. In the UK, the ‘traditional’ penalties, sanctioning transporters for transporting undocumented passengers, have been supplemented with another penalty system: a civil penalty for carriers who transport clandestine entrants. Thus, the scale and impact of the policy in the UK is different from the Netherlands. In the UK, various transport branches are affected by these requirements but they all have to deal with different circumstances in which to operate, as was described in Chapter 9. There is strong competition between these transporters but also close interdependence; for example, measures taken by ferries to check the lorries they intend to transport, concern not only the ferry company but also the road hauliers.

This difference in the scope of the policy is for the most part connected to the geographical and political position of these states. The Netherlands is a Schengen Member State and only has external border control at its air and seaports, it is not able to check persons travelling over land. The UK, however,