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Cross-Border Contracts: Why One Small Clause Can Make a Big Difference

Doing business between the Netherlands and the Czech Republic has never been easier. Dutch companies source products and services from Czech suppliers, Czech businesses serve Dutch customers, and commercial partnerships between companies in both countries continue to grow. Yet while negotiating prices, delivery schedules and payment terms, businesses often overlook a less visible but equally important question: what happens legally if something goes wrong? As long as both parties perform as agreed, the answer may seem largely academic. But the moment goods turn out to be defective, an invoice remains unpaid, a delivery is delayed or the parties disagree about their respective obligations, the legal framework governing the contract suddenly becomes crucial. And sometimes, a single clause can make all the difference.

Dutch law or Czech law?

One common misconception is that a Dutch company contracting with a Czech company will automatically be protected by Dutch law. That is not necessarily the case. For cross-border contracts within the European Union, the Rome I Regulation provides the framework for determining which country's law applies to contractual obligations. One of its key principles is party autonomy: businesses are generally free to choose the law that will govern their contract.

A contract may therefore contain a clause stating: *"This Agreement shall be governed by and construed in accordance with the laws of the Netherlands."*

Alternatively, the parties may choose Czech law.

What matters is that the choice is made consciously and clearly. If the contract contains no choice-of-law clause, the applicable law will have to be determined under the rules of private international law. The outcome may be different from what either party assumed when entering into the agreement.

Choice of law and choice of court are two different things

Another frequent source of confusion is the assumption that choosing Dutch law automatically means that any dispute will be heard by a Dutch court.
It does not.

The question of which law applies and the question of which court has jurisdiction are legally distinct. Within the European Union, jurisdiction in civil and commercial matters is largely governed by the Brussels I bis Regulation. Depending on the circumstances, a Dutch company may therefore find itself litigating before a Czech court – even though Dutch law applies to the underlying contract. For this reason, a well-drafted international agreement should usually address both issues separately: the governing law and the competent court. Parties may, for example, agree that Dutch law governs the contract and that disputes are to be submitted exclusively to the competent court in Amsterdam. Alternatively, they may opt for Czech law and the courts in Prague. The precise choice will depend on the transaction and the negotiating position of the parties.

What matters most is clarity. A few carefully drafted lines at the beginning of a business relationship can prevent a costly preliminary dispute about where proceedings should take place.

Do not forget the CISG

There is another layer that Dutch and Czech companies should be aware of when buying and selling goods internationally: the United Nations Convention on Contracts for the International Sale of Goods (CISG), commonly known as the Vienna Sales Convention. Both the Netherlands and the Czech Republic are Contracting States to the CISG. As a result, the Convention may apply to many international sales contracts between Dutch and Czech companies. Importantly, simply stating that Dutch law applies does not necessarily exclude the CISG.

This is an area where a short contractual provision can have significant consequences. If the parties do not want the CISG to apply, they should consider expressly excluding it. Conversely, there may be perfectly good reasons to retain it. The CISG was specifically designed for international trade and provides businesses from different legal systems with a common set of rules governing international sales. The important point is not that the CISG should always be excluded – or always applied – but that businesses should make that decision deliberately rather than discover the answer only after a dispute has arisen.

Example: A defective machine: a simple example with complicated questions ……..[!]

Consider the following scenario. A Dutch company purchases a machine from a Czech supplier. The machine is delivered to the Netherlands and initially appears to operate normally. Several weeks later, serious technical problems emerge.

The Dutch buyer claims that the machine does not meet the agreed specifications. The Czech seller maintains that it was fully operational when delivered and rejects liability.

A seemingly straightforward commercial disagreement now raises a series of legal questions.

Which law governs the contract? Does the CISG apply? Was the buyer required to inspect the machine immediately after delivery? How quickly should the buyer have notified the seller after discovering the defect? Should the seller first be given an opportunity to repair the machine? Can the buyer terminate the contract? Can the purchase price be recovered? And there is one more fundamental question: where should proceedings be brought – in the Netherlands or in the Czech Republic?

If the contract has been carefully drafted, many of these questions may already have been answered before the problem arose. If it has not, the parties may find themselves arguing about the legal framework before they can even begin discussing the actual defect.

Whose general terms and conditions apply?

General terms and conditions are another potential source of problems in Dutch-Czech transactions. Imagine that a Dutch buyer sends a purchase order referring to its Dutch general terms and conditions. The Czech supplier responds with an order confirmation stating that its own Czech terms and conditions apply. The transaction proceeds and neither party gives the issue much further thought. Until something goes wrong.

The Dutch terms may contain one limitation of liability, while the Czech terms contain another. They may provide different warranty periods, payment arrangements, choice-of-law provisions and jurisdiction clauses. Which set of terms forms part of the contract can then become an important – and sometimes complex – legal issue in its own right.

Companies should therefore not treat general terms and conditions as an administrative attachment. In an international transaction, both their content and the way in which they are incorporated into the contractual relationship deserve careful consideration.

English may be the common language – but not necessarily the common legal language

Many Dutch-Czech contracts are negotiated and drafted in English. From a commercial perspective, this is often the most practical solution. Legally, however, English terminology can create another layer of complexity. A legal concept familiar under Dutch law may not have an exact equivalent under Czech law. Similarly, a Czech legal term translated literally into English may carry a different meaning when read by a Dutch lawyer. This is why translating an existing national contract into English is not always enough. The real question is whether the English wording achieves the intended legal result under the law governing the agreement.

Draft the contract while everyone is still getting along

Contracts are sometimes regarded as documents to be consulted only when something has already gone wrong. In reality, the best contracts are drafted precisely to prevent uncertainty if that day ever comes.

For Dutch-Czech business relationships, parties should therefore consider at least the following before signing:

- Which country's law will govern the agreement?
- Which courts will have jurisdiction?
- Will the CISG apply, or should it be expressly excluded?
- Which general terms and conditions apply?
- What has been agreed regarding delivery, inspection and defects?
- How is liability allocated and limited?
- When and how may the agreement be terminated?
- Which language version of the contract will prevail?

These questions may seem secondary while the commercial relationship is being negotiated. Once a dispute arises, however, they can become some of the most important provisions in the entire agreement.

Prevention is usually cheaper than litigation

The Netherlands and the Czech Republic are both part of the European internal market, which has made cross-border trade considerably easier. But European integration does not mean that the differences between national legal systems have disappeared. Companies should therefore resist the temptation to assume that a contract between two EU companies will simply "work itself out" if difficulties arise.

What does this mean for you?

The best time to discuss governing law, jurisdiction, international sales rules and contractual remedies is not when lawyers have already been instructed. It is when both parties are enthusiastic about the transaction, trust each other and are ready to sign. In cross-border business, a few carefully considered lines in a contract can prevent months of uncertainty – and sometimes years of litigation.

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