

Modern Business Structures for Lawyers
In the Interest of a Proper Provision of Justice

Summary

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COLOPHON

Erasmus Universiteit Rotterdam
European Civil Justice Centre
Burgemeester Oudlaan 50
3062 PA Rotterdam
The Netherlands
stokkermans@law.eur.nl
Phone +31622207994

Pro Facto
Ossenmarkt 5
9712 NZ Groningen
The Netherlands
www.profacto.nl
info@profacto.nl
Phone +31503139853

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Authors: Erasmus Universiteit Rotterdam (EUR):
Prof. dr. Chr.M. (Christiaan) Stokkermans (project leader)
Prof. dr. X.E. (Xandra) Kramer
Pro Facto:
Prof. dr. H.B. (Heinrich) Winter
Mr. E.A. (Ernst) van Bergen
Mr. E. (Erwin) Krol

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Supervisory committee:

- Em. prof. dr. E. (Bert) Niemeijer (Vrije Universiteit Amsterdam) chair
- Dr. D.J.B. (Diana) de Wolff (former endowed professor University of Amsterdam) member
- Dr. Q. (Quirine) Eijkman (University of Applied Sciences Utrecht) member
- Mr. A.M. (Alwin) Farahani (Ministry of Justice and Security) member
- Dr. S. (Saskia) Baas (WODC) member

Summary

This study concerns the need for modern business structures for lawyers (*advocaten*) in light of the aim to improve access to justice. In order to provide for an overall modern range of available business structures, we have examined whether there is a societal need in the Netherlands for innovative business structures and, if so, how these should be regulated.

On 13 December 2024, the State Secretary for Justice and Security presented a vision for strengthening access to justice. This vision entails that everyone in the Netherlands should be able to find an appropriate and sustainable solution to a (legal) problem. Previous research for the WODC, conducted by Erasmus University Rotterdam (EUR) on the situation in other European countries, showed that loosening regulation creates opportunities for innovative business structures that serve consumer interests, including affordability and accessibility of legal services. This study builds on that work and focuses on the specific needs in the Netherlands. It was commissioned by the Research and Data Centre (WODC) of the Dutch ministry of Justice and Security.

Access to Justice

In the aforementioned vision, the State Secretary defines access to justice as meaning that citizens, self-employed persons, businesses and organisations with a legal issue have access to objective (reliable) information, advice and support – including legal assistance and representation – and have the opportunity to obtain a decision from a neutral body.

Specifically regarding legal assistance, the State Secretary notes that it must be accessible and of high quality. In some cases, this requires a multidisciplinary approach involving both legal and non-legal support, but often it involves “being able to make use of simple, affordable, fast, and personal pathways” to reach an appropriate outcome.

In the Netherlands, not everyone has equal access to affordable and suitable legal assistance. Research for the WODC shows that people with low incomes, young adults and individuals with limited self-reliance in particular face barriers to engaging legal assistance providers. The accessibility of legal support for middle-income groups and small and medium-sized enterprises (SMEs) has been studied less extensively, but it is assumed that they also face difficulties in affording legal assistance. They are not eligible for subsidized legal aid or reduced court fees, while premiums for legal assistance insurance are rising and membership-based non-profit organisations offering legal services are losing members.

There are also significant regional disparities in access to legal assistance. Many regions within the Netherlands face a shortage of legal aid lawyers, resulting in excessive workloads and the need to turn away clients.

Given these challenges, it is important to consider how the supply of accessible, high-quality legal assistance – and thus access to justice – can be improved. In this context, the regulation of business structures for lawyers deserves attention. Earlier research by Erasmus University Rotterdam concluded that relaxing regulation creates opportunities for business structures that better serve those seeking justice.

Business Structures

The term ‘business structures’ refers to the organisational forms within which lawyers practice. This includes aspects such as control, governance, hierarchical relationships, collaboration with other professions, and capital participation.

Current rules on business structures are primarily laid down in the Legal Profession Regulation (Voda) and related regulations of the Dutch Bar Association (*NOvA*). These rules purport to ensure proper professional practice by individual lawyers and safeguarding their ability to operate freely and independently. Professional independence is a statutory core value for lawyers, enabling them to uphold other core values for lawyers as well, such as partisanship, expertise, integrity and confidentiality.

For example, specific restrictions apply to lawyers employed by non-lawyers. These are safeguards, intended to prevent the lawyer’s professional independence from being undermined by the employment relationship. Employers who are lawyers are themselves bound by the profession’s statutory core values, including the obligation to respect the independence of employed lawyers. This justifies different rules where the employer is not a lawyer.

The rules in the Dutch Lawyers Act (*Advocatenwet*), the Voda, and related regulations primarily focus on individual professional independence, rather than on optimizing the legal profession’s overall contribution to the legal services market. This neglect raises the question of whether current rules are overly restrictive and unnecessarily hinder innovative organisational forms that could complement existing services.

Research Question

This study aims to answer key questions about the introduction and promotion of innovative business structures. These are organisational forms that are either not currently permitted or permitted but rarely used in the Netherlands.

The central research question is:

“In light of experience with existing business structures, to what extent is there a societal need for innovative business structures for lawyers in the Netherlands?”

The study examines whether such a need exists, how innovative structures might contribute to the legal services on offer in a meaningful way, and how they should be regulated. In this context, a meaningful contribution is to be understood in particular as the potential for improved alignment of supply on the legal services market with demand, especially for low- and middle-income groups and SMEs. Where it comes to admissibility of innovative structures, we also take account of the need for proper safeguards to mitigate risks, such as threats to professional independence.

Research Approach

The research is based on legal analysis, desk research, interviews, consultations and focus groups. We first analysed existing rules in the Dutch Lawyers Act and relevant regulations from the Dutch Bar Association (the Voda, the Regulation on the Legal Profession, the Code of Conduct, and guidelines on partnerships). Article 10a of the Dutch Lawyers Act sets out the profession’s core values. The Dutch Bar Association’s regulations only permit structures compatible with these core values.

We also conducted a review of legal and academic writing to gain insight into the current situation, and into experiences and needs regarding innovative structures. We have investigated the extent to which affordable and accessible legal services are being provided through the current business structures. In particular, we have focused on access to justice for individuals, SMEs, and legal aid. In addition, we have developed an assessment framework based on relevant legal concepts. It provides for assessment criteria and a step-by-step evaluation method which allow for careful assessment of innovative business structures.

Data published by the Dutch Bar Association provided insight into existing business structures in which lawyers practice. Additional information obtained from the Dutch Legal Aid Board further informed our understanding of the business structures legal aid lawyers practise in.

We conducted numerous interviews to map out experiences with current business structures and the needs for new business structures. In these interviews, potential new organizational forms and how they might serve societal interests were discussed. In this context we have interviewed representatives of the legal profession (including representatives of the Dutch Bar Association and board members of specialist associations), legal assistance insurers and associated claims management undertakings,¹ the Legal Aid Board, social legal service providers, representatives of other professional groups, and persons involved with innovative business structures.

Additional consultations included seminars, follow-ups, and two focus groups involving experts and stakeholders.

Current Regulatory Framework

Business structures are mainly governed by the *Voda*, adopted by the Board of Representatives of the Dutch Bar Association.² The Dutch Lawyers Act delegates regulatory authority broadly to the bodies of the Dutch Bar Association. In terms of regulatory objectives, the Dutch Lawyers Act focuses on sound practice by individual lawyers, in accordance with the statutory core values for lawyers: independence, partisanship, expertise, integrity, and confidentiality. Hence, the statutory duty of the Dutch Bar Association is strongly focused on professional standards for lawyers individually. The Dutch Lawyers Act is unclear about the extent to which the Dutch Bar Association, as a public-law professional institution, bears broader responsibility for the societal contribution of the lawyers' professional group as a whole.

The current legal framework for business structures for lawyers is set out in the *Voda*. Umbrella regulation for legal professionals or legal services is in-existent in the Netherlands. Civil law notaries and bailiffs are regulated separately as well. In-house lawyers of legal assistance insurance companies and claims management undertakings are subject to a few provisions in the Dutch Act on Financial Supervision (*Wft*), in addition to the *Voda* rules applicable to them.

¹ In the Netherlands, legal expenses insurance is usually offered in kind, with the insured legal assistance being provided by in-house lawyers of the insurance company or the claims management undertaking it uses, subject to the client's free choice of lawyer rights protected by articles 200 and 201 of Directive 2009/138/EC.

² This board is comprised of representatives of the eleven local bars association in the Netherlands. There is a local bar association for each judiciary district.

The Voda mainly allows four types of business structures:

- lawyers that are self-employed or practice in partnership with other lawyers, who may have other lawyers as employees, it being permitted that the solo or joint practice is exercised within a corporate structure;
- lawyers that practice in a multidisciplinary partnership with professionals of permitted other professions (MDP-practices), i.e. civil law notaries, certain tax advisors and patent attorneys, with the MDP-practice also being allowed to have other lawyers as employees and to exercise in a corporate structure;
- in-house lawyers employed by legal assistance insurers and claims management undertakings, who may act on behalf of the insured (and, if participating in the current regulatory sandbox, also for non-insured clients); and
- in-house lawyers employed by member-based non-profit organisations, who may act on behalf of the members of such organisations (for example in-house lawyers of a workers unions who may act on behalf of members in employment disputes).

The Voda provides for restrictions to business structures, for the purpose of safeguarding the professional independence of the individual lawyers. These include provisions on board composition and object clauses of incorporated practices as well as a ban on external capital (equity) investments. With respect to legal assistance insurers and claims management undertakings which may have their in-house lawyers act for the insured, and with respect to non-profit organisations which may have their in-house lawyers act for members, the Voda imposes internal organization rules. These in-house lawyers must be included in a separate organizational unit, functioning in a sufficiently independent manner. These rules include that the employer concerned must enter into a 'professional statute' contract with each of its in-house lawyers.

Legal Services Market

The legal services market does not function optimally. The system of publicly funded legal aid is increasingly under pressure: a significant number of legal aid lawyers are leaving the profession, while the inflow of new lawyers remains limited. The sector is largely composed of self-employed professionals, who often lack the capacity to train new entrants. Combined with structurally low profit margins, this makes it difficult to sustain viable business models within legal aid practice. This restricts the access to justice for low-income groups that depend on this system of publicly funded legal aid.

Middle-income groups and SMEs also face challenges due to high costs and limited supply. Alternatives such as legal assistance insurance and trade union membership face rising costs and declining participation.

Regulatory constraints on business structures appear to contribute to these inefficiencies. The study concludes that there is a societal need for innovative business structures.

Assessment Framework

In light of the identified need for innovative business structures, the question arises under what conditions such structures add value to access to justice and should be considered eligible for authorization. To address this question, we developed an assessment framework consisting of three interrelated elements. The first element concerns the role of the Dutch Bar

Association in contributing to the proper provision of justice in the Netherlands. In the Dutch Lawyers Act, the Bar Association's duties in that respect are phrased too narrowly. The Dutch Bar Association may be expected to make a broad contribution to the public interest of a proper providing of justice, not only by promoting compliance with core professional values by individual lawyers, but also by assuming broader responsibility for the effective functioning of the legal system as a whole.

The second component of the assessment framework for innovative business structures consists of a proportionality test with four steps: (1) the contribution of the business structure to the proper provision of justice, including the promotion of access to justice; (2) the need for effective and non-excessive safeguards; (3) compliance with the principle of equality; and (4) an overall assessment and conclusion. This framework is inspired by comparable assessment models developed within EU law for other purposes.³

Within this proportionality test, the first steps examines the extent to which a proposed business structure may contribute to the proper provision of justice, including access to justice. The second step identifies appropriate safeguards (see below). The third step concerns the principle of equality, which requires that similar cases be treated alike and different cases be treated differently in proportion to their differences. It must be ensured that differing cases are not treated in a disproportionately unequal manner. The fourth step involves an overall assessment, in which the outcomes of the preceding steps are considered in conjunction, with determination as to whether the proposed business structure should be permitted.

The third element of the assessment framework we propose, elaborates on the nature of the safeguards available in the second step of the proportionality test. Innovative business structures may require equally innovative forms of regulation. In addition to safeguards directed at individual practitioners, it is in our view essential that the entity operating the lawyer's practice be subjected to more direct accountability. Against this background, we recommend the introduction of a system of prior recognition in which the operating entity is designated as the primary addressee of certain regulatory norms. Such a system would allow for ex ante assertion as to whether the operating entity applying an innovative structure complies with appropriate safeguards. These safeguards may relate among others to the mission of the operating entity, the allocation of ultimate control over it, governance and supervisory arrangements, internal organisational structures, and sanctions that may be imposed on the operating entity in the event of non-compliance.

Building on this assessment framework, the study proposes an action plan for an update of the range of available business structures for lawyers. This plan envisages a phased approach to the introduction and regulation of innovative organisational forms within the legal profession

Action Plan for Updating the Range of Available Business Structures

In the study, we present an action plan for updating the range of available business structures. This plan consists of three phases. The first phase concerns four types of business structures

³ This includes case law on the EU freedom of establishment: CJ EG 9 March 1999, ECLI:EU:C:1999:126 (*Cen-tros*), point 34; CJ EU 30 September 2003, ECLI:EU:C:2003:512 (*Inspire Art*), point 133. See also earlier decisions CJ EC 31 March 1993, ECLI:EU:C:1993:125 (*Kraus*), point 32; and CJ EC 30 November 1995, ECLI:EU:C:1995:411 (*Gebhard*), point 37. Furthermore, see Directive (EU) 2018/958 (on professional qualifications), articles 4, 5, 6 and 7.

that are already existing (in part permitted on an experimental basis) and deserve particular attention in light of their potential contribution to access to justice. This phase also includes several important regulatory changes that are easy to implement. The second phase addresses two types of business structures that are not currently permitted but are likewise expected to make a significant contribution to the proper provision of justice. The third phase concerns the allocation of regulatory powers and, more specifically, the question of which body should be responsible in the future for decisions regarding the admissibility of business structures.

Phase 1:

Phase 1 of the action plan, which should lead to decision-making before 1 January 2028, focuses on the assessment of four innovative business structures. These include 1) the existing regulatory framework for in-house lawyers employed by legal insurance companies and associated claims management undertakings. 2) the ongoing experiment involving the claims management undertakings BrandMR and VvAA, 3) potential regulatory changes for providers of subsidized legal assistance, and 4) franchise organisations and cooperative models. In our view, the experiment relating to claims management undertakings can be converted into a permanent regulatory arrangement, without retaining the requirement that a majority of board members must be qualified lawyers. For non-profit organisations primarily engaged in the provision of social legal assistance, the existing restriction that in-house lawyers may only assist members, can be abolished. At the same time, the relevant claims management undertakings and non-profit organisations could be subjected to a system of prior recognition, accompanied by additional safeguards, including a suitability assessment for board members who are not lawyers. With regard to franchise organisations, we advocate for certain clarifications of the existing regulatory framework, including the scope of the restrictions on the use of brand names as set out in Article 5.5 of the Voda.

Phase 2:

Phase 2 addresses potential regulatory changes to allow for more types of multidisciplinary practices of lawyers and other professionals. It also addresses the question of third-party capital investments in law firms. Compared to the changes proposed in phase 1, we consider regulatory reform in these areas to be somewhat less urgent. Moreover, these issues are more complex and require further reflection and consultation. In conjunction with any relaxation of the current rules, a requirement of prior recognition for the entity providing legal services may also be considered. With a prior recognition requirement, additional safeguards could be imposed. In our view, decision-making on these matters should be completed before 1 January 2030.

Phase 3:

Phase 3 of the action plan, as recommended in this report, concerns a reassessment of the allocation of regulatory powers. At present, the power to regulate business structures is vested in the Board of Representatives of the Dutch Bar Association. As discussed throughout this report, the rules established by the Dutch Bar Association are restrictive in several respects and may impede innovation. In our assessment, it is feasible to implement the measures proposed in Phases 1 and 2 within the existing framework of competences. In the long term, the question arises whether this framework remains appropriate. While the rules of the Dutch Bar Association are designed to safeguard the free and independent practice of

the legal profession, they also have the effect of limiting market access and offer limited room for innovation.

We take the view that the contribution of the legal profession to the proper provision of justice extends beyond the protection of professional independence, which currently appears to be the primary focus of the regulatory framework. There is a risk that the Dutch Bar Association prioritizes the interests of the profession over broader societal interests, thereby giving rise to concerns of regulatory capture. For this reason, it is preferable to assign responsibility for the regulation of business structures to an independent body, separate from both the Dutch Bar Association and the government. Such independent body will be able to develop the necessary expertise, and capacity to conduct evaluations and assess societal needs and desirable innovations.

Such an independent body – whether established within the institutional framework of the Dutch Bar Association or as a technically separate administrative authority – could be entrusted with the power to assess and authorize business structures, comparable to arrangements in jurisdictions such as England or (to a lesser extent) Germany and France. It would be conceivable for this body to be combined with the independent supervisory authority for the legal profession, which is currently envisaged. The independent regulatory body for business structures could for instance be set-up as a separate unit of the independent supervisory authority.

To conclude

Further consultation with stakeholders is required to flesh out the contours of the three phases outlined above. In our view, the Ministry of Justice and Security should play a central role in this, given its systemic responsibility for the legal services sector as a whole. The Dutch Bar Association and other bodies such as the Legal Aid Board, and the current Supervisory Authority of the Dutch Bar Association (which is proposed to be transformed into the aforementioned independent supervisory authority), and those involved in innovative business structures, should also be included in this discussion as well. The professional organisations for other legal professions such as civil law notaries and bailiffs could also be involved in certain aspects.

We have outlined a timeline for the three phases. In the short term, phase 1 can be initiated and should be completed before 1 January 2028. In the period leading up to that, phases 2 and 3 can also already be started. Phases 2 and 3 should be completed by 2030 and 2032 respectively.