
Fees Official Acts Judicial Officers

Tarieven ambtshandelingen gerechtsdeurwaarders

Evaluative study of fees of several products

Cebeon
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summary

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S Summary

S.1 Introduction

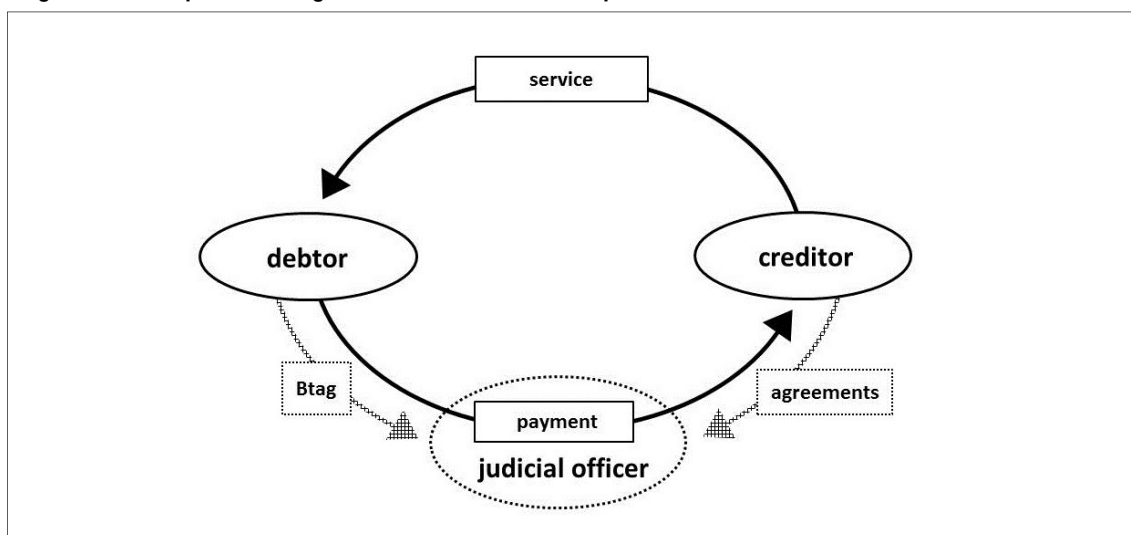
evaluative study of several fees

The “Research and Documentation Centre (WODC)” of the Ministry of Security and Justice, commissioned research bureau Cebeon to conduct an evaluative study of the current “Btag-fees”¹ of a limited sample of ‘official acts’² that can be performed by a ‘judicial officer’^{3,4}.

The goal of this study is to assess whether this sample of Btag-fees still complies with the assumptions that were formulated by the ‘Van der Winkel Commission’ in 2001.

The diagram below shows the position of the judicial officer in relation to the debtor and the creditor.

Diagram S.1: position Btag-fees in relation to various parties



Whenever a debtor fails to pay its creditor, the creditor can resort to a judicial officer to pursue the official collection of the payment (when unofficial debt collection has failed). In that process, the judicial officer has to perform certain ‘official acts’. The fixed fees that may be charged after performing these ‘official acts’, are prescribed in the Btag-fees. These fees are charged to the debtor. The debtor therefore has to pay both the principal as well as the Btag-fees. The judicial officer makes separate (financial) agreements with the creditor.

This study focusses only on these Btag-fees (left part diagram) and not on the (financial) agreements (and market forces) that exist between the creditor and the judicial officer (right part diagram).

strong dynamics since introduction Btag-fees in 2001

Current fees are based on cost assessment studies from 1998 and time assessment studies from 2000. The current study is based on 2015. In this period, the Btag-fees were only adjusted through indexing. On a

¹ Btag: ‘Besluit tarieven ambtshandelingen gerechtsdeurwaarders’. The study evaluates the basic rates of Btag 2015.

² “ambtshandelingen”

³ “deurwaarder”, also ‘enforcement officer’ or ‘bailiffs’

⁴ Research conducted between September 2015 and July 2016.

yearly basis, the fees of all products have been indexed uniformly, based on the general development of salary, productivity and price.

In contrast to this uniform index, the period between 2000 and 2015 witnessed a variety of developments for the daily (prescribed) practice of judicial officers. These developments have had varying effects on the time and cost expenditure of judicial officers. The most significant of these developments are:

- introduction of the ‘Judicial Officers Act’ in 2001 (increasing market mechanisms);
- sector related developments (increased quality demands/prescriptions, more acts);
- societal, technological and economic developments (more automation, more attention for debtors, more vocal contacts).

The current study assessed what the combined impact has been of these developments on the costs of the (selection of) products (containing official acts) of judicial officers. The resulting current image of the total costs of these products was compared to the current Btag-fees for these products.

The current outcome of total costs was the result of an evaluative study of limited scope. These results are therefore tentative. If an actual recalibration of fees is deemed desirable, a more exact outcome would require more thorough research.

S.2 Study design

examining same links as earlier study

In order to determine the integral costs, the same links were examined and combined in the same way as the study of the Van der Winkel Commission from 2001, on which the current Btag-fees are based.

sample of 6 products

In the current cost study, 6 products⁵ (out of 24) were examined, namely:

- “dagvaarding”;
- “betekening titel”;
- “overbetekening diverse beslagen”;
- “beslag (onder derden) op periodieke betalingen”;
- “executoriale verkoop”;
- “betekening verzoekschrift faillietverklaring”.

The first four products occur relatively frequently⁶. In the past, the cost prices of these products were determined entirely on the basis of time measurements. The two other products occur less frequently. In the current study, the time spent on these products was assessed (“getoetst”) through a panel meeting.

selection of offices

The data for this study (cost and time measurements) were acquired from a selection of 12 offices of judicial officers. These offices reflect a variety of relevant characteristics, ranging from small to large, from (strongly) urban areas to (strongly) rural areas. Offices that are under (strict) financial supervision of the Financial Supervision Office (BFT) were excluded from the selection (see Appendix C).

⁵ Appendix A gives a general description of these products, as well as the Btag-fee in 2015.

⁶ Reliable data of the relative frequencies of these products is not available at the national level.

investigated links

Equal to the previous study of 2001, the following links were assessed, which combined enable the calculation of the integral costs:

- (direct) labour costs per unit of time, differentiated in three types of officials (candidate-/judicial officer, juridical employee and other employee);
- (indirect) costs of support (personnel as well as material) per unit of time;
- time expenditure per act per product, where individual acts are linked to one of the three officials.

Like in the previous study, time measurements were conducted for the selected products of all the underlying acts, where every act is linked to one of the three officials (see Appendix B). Time measurements were conducted during several days per office.

panel meeting

Besides the collected data from time measurements and financial details from the selected offices, the results were partly based on the information from a panel meeting. For this panel meeting 10 participants were invited. Amongst whom were representatives both from inside and outside the selected offices. During the meeting the plausibility of the time measurement results was discussed, as well as other relevant links, such as the fixed increments, productive hours per employee, judicial officer's income, "verschotten"⁷, and current developments).

S.3 Results

On the basis of the acquired information on the underlying links, a calculation of the integral costs for the four products was made, in the same way as was done in the previous study for the Van der Winkel Commission. The current Btag-fees of 2015 were compared with the result of these calculations.

Figure S.2.: Indicative comparison of the Btag-fee 2015 with the results of the integral costs calculation (in euros)

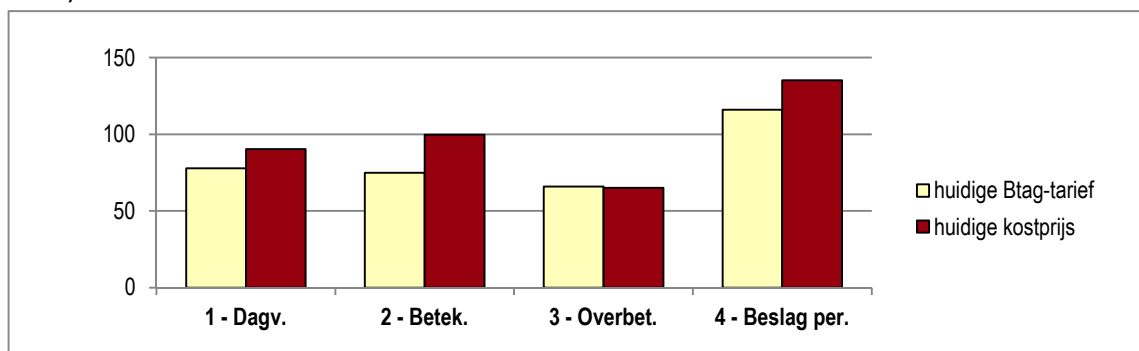


Figure S.2 shows that the Btag-fees for 2015 clearly deviate from the outcome of the evaluative study for these four products. Expressed as an index, the level of the integral cost calculation in terms of the level of the Btag-fees (fee = 100) is: 116, 133, 99, 116.

The two main findings on the basis of this evaluative comparison are:

- the difference between current Btag-fees and the calculated integral costs differ per product:
 - for the product 'overbetekening diverse beslagen' the fee is rather equal to the level of the integral cost calculation;

⁷ the costs of having to hire third parties (e.g. locksmith), which are passed on to the debtors.

- for the other products, the fees clearly deviate from the level of the calculated integral costs. The relative deviation differs significantly as well. For the product ‘betekening titel’ the relative deviation is clearly larger than for ‘dagvaarding’ and ‘beslag periodieke betalingen’.
- overall, the level of the Btag-fees stays behind the level of the integral cost calculation.

In addition, on the basis of the panel meeting, there are strong indications that for the two other (less frequently occurring) products, the current fees no longer fit to the current integral costs.

changes in cost structure and lagging Btag-fees through indexation

The difference between the current Btag-fees and the integral cost calculation is due to, on the one hand, several developments since the introduction of the Btag-fees. There have been changes in practically all underlying links:

- time expenditure has changed per product, but also per type of employee per product;
- the cost of labour and of (indirect) support have developed differently;
- the assumptions behind the fixed increments fit less well with current practice;
- part of the costs are now being charged to debtors outside of the Btag-fee, through so-called “verschotten”.

On the other hand, the difference between Btag-fees and the integral cost calculation is due to the applied indexation.

Both types of cause will be addressed below.

development time expenditure

Table S.1. shows the difference in time expenditure between 2000 and 2015.

Tabel 1. Total average time expenditure per product in minutes.

<i>products</i>	<i>Study 2000</i>	<i>Study 2015</i>	<i>Current time in %* time previous study</i>
1 Dagvaarding	70	68	98%
2 Betekening titel	65	68	105%
3 Overbetekening diverse beslagen	57	46	81%
4 Beslag op periodieke betalingen	91	87	96%

* because of rounding of parts, displayed percentages can differ.

time expenditure decrease deviates from productivity discount

On average, the time expenditure is several percentages lower for the four frequently occurring products. This modest decrease contrasts with the productivity discount that is incorporated in the indexation. The indexation takes into account productivity gains of circa 22% for all products. Because the actual productivity gains are much lower, Btag-fees lag behind the integral costs.

differences between products

The degree of deviation in the difference with the Btag-fees between the four products is, to an important degree, due to the fact that the time expenditure has developed so differently between the products. This is due to the different impact that the developments have had over the past years on the different products (e.g. changes in laws and regulations, effects of automation, other changes in production circumstances).

Automation⁸, for example, allows for time savings particularly in the administrative processes. The share of acts that are linked to “other employees” has decreased as a result. The share of acts that are linked to judicial employees or judicial officers has increased. The work of these latter types of officials is much less prone to automation (studying court rulings for example or physically delivering (‘serving’) official documents⁹) or are even subject to productivity loss (for example because of longer traveling times). In addition, the increased digital access to information leads, on the one hand, to shorter time expenditure on certain process elements. But on the other hand, it can lead to more frequent consultations. This may also be induced by regulations, such as a prescribed shorter shelf-life for certain information. Such increased consultations may eventually result in an actual higher time expenditure on these acts because of automation.

developments in costs of labour

The results indicate that the average salary of the three types of officials per productive hour has developed in a similar way to the salaries of comparable officials in the public sector. The factual development is just below the applied salary development in the index for Btag-fees. However, because of the shift in the mix of the time expenditure of the different officials (currently, relatively more time is spent by more expensive officials), the average rate of labour costs per productive hour for the four products is several percentages higher than the development in the salaries per hour.

development in costs of (indirect) support

In addition to (direct) labour costs, the (indirect) costs of support (personal and material) also need to be taken into account. These costs have risen 10 to 15% faster per productive hour than the labour costs. Per product, the relative increase is lower, because the average time per product has decreased somewhat. This relative increase appears to result from the extra costs of automation (hardware, software and IT-workers). Which is being applied for time saving through the automation of (standardised) acts.

assumptions behind fixed increments no longer conform to practice

The fees incorporate fixed increments for traveling time, “informatievoorziening”¹⁰ and ‘reasonable profit’. The assumptions on which these fixed increments are based, no longer align with practice.

On the basis of the time measurements, the average time spent on traveling has increased by several minutes. This embodies a direct productivity loss for the most expensive type of official, the judicial officer (of several percentages for the measured products). This development is incorporated in the previously displayed development of integral costs (S.2.).

The circumstances for the fixed increments (increased attention for (the more vocal) debtors and creditors) as well as the ‘reasonable profit’ (more market mechanisms) have undergone strong changes. The assumptions behind these increments are therefore in need of re-evaluation. In the displayed developments of integral costs (S.2.), the developments in the fixed increments have not been incorporated, because adjustment requires new (normative) assessment and consideration.

(new) role of “verschotten” parallel to Btag-fees

Sometimes a judicial officer has to contract third parties for certain acts, e.g. a locksmith for an evacuation. The costs of these third parties are charged separately through so-called “verschotten”. Because these costs occur infrequently and vary case by case, they are kept out of the Btag-fees. As a general rule, the costs of time expenditure by the judicial officer or his employees (‘own time’) may not be charged through these “verschotten”.

⁸ the use of computers to facilitate (administrative) processes.

⁹ “betekenen van een exploit”

¹⁰ informing debtors and creditors

In practice however, certain acts of the judicial officer or his employees are nonetheless being charged through “verschotten”. It concerns the acts that are involved in the step of ‘informatievoorziening’¹¹. In this step the digital registrars are being consulted, through data links with external parties such as SNG¹², BRP¹³ and the Chamber of Commerce. The costs of the hits per consultation are charged to debtors as “verschotten”. However, these hit costs contain a surcharge for the ‘own time’ spent by the offices on consulting these databases.

In the previous study, only the step “informatievoorziening” was assigned to the product “dagvaarding”. The step “informatievoorziening” was not assigned to other products, in the current Btag-fees.

In the current study, the costs of the ‘own time’ on the step “informatievoorziening” were incorporated, through the time measurement, into the calculated integral costs of the four frequent products, conform the general rules. In the comparison between the current Btag-fees and the calculated integral costs, the income from the separately charged “verschotten” for consultations remains out of view. The (financial) difference between Btag-fees and the integral costs in diagram S.2., therefore, is in practice smaller (for debtors).

Depending on the type of consultation, these costs amount to 1 or 2 euros per hit. One product can contain several hits. More insight into the scope of these costs would require further research.

In this way, a separate flow of reimbursements has arisen outside the Btag-fees, which could also be incorporated within the fees. This requires a re-evaluation of the role of such “verschotten” next to the Btag-fees. In such a re-evaluation, the way in which the non-personnel hit costs are or are not part of the Btag-fees could also be considered.

To also incorporate the non-personnel hit costs into the Btag-fees could be cost-saving in itself, as registering and billing these costs separately requires (additional) administrative steps.

S.4 Dynamic environment, timely maintenance

The past years have seen a clear deviation between the development of the Btag-fees and the development of actual costs in the practice of performing ‘official acts’. The costs of the different products have developed quite differently between products, because of the strong dynamics over the past 15 years. However, the level of Btag-fees has lagged behind and, through the influence of the uniform index, has maintained the same relative size between products since its introduction.

In addition, ongoing or future developments are expected to have various effects on the costs of the practice of performing these ‘official acts’. A uniform indexation cannot safeguard that fees stay close to actual costs. If a deviation between fees and costs that also differs among products is deemed undesirable, this calls for a new perspective on the way in which fees are maintained over the years.

From the indexation, the component of the supposed productivity development is most set for re-evaluation. The actual costs of ‘official acts’ is partly dependent on changes in rules and regulations and is not easily captured in a general sector index. Especially when these rules and regulations are quite

¹¹ The step “informatievoorziening” differs from the fixed increment “informatievoorziening”. The former refers to collecting the necessary information to perform the ‘official act’. The latter refers to the time that is spent by the judicial officer or its employee’s to inform either the debtor or the creditor. In the previous study they are coined under the same name.

¹² “Stichting Netwerk Gerechtsdeurwaarders”

¹³ “Basisregistratie Personen” – the Municipal Personal Records Database

different from other sectors of the economy. This calls for more aimed or frequent maintenance when costs for certain parts of the process change because of such effects.

This evaluative study disclosed several discrepancies in the fee-structure. If these fees for ‘official acts’ were re-evaluated, a number of backgrounds of the current costs, could receive special attention. Such as differences between products, new employee category demarcation, differences in models of organisation, varying possibilities for automation and the relation with fixed increments and “verschotten”. Fees for ‘official acts’ could also be viewed in a wider context, specifically in relation to the (financial) agreements with creditors (tenders) and the non-official practice of debt collection¹⁴.

¹⁴ incassopraktijk