

Summary

In the Netherlands, small and medium-sized businesses (SME's) are often referred to as the driving force behind its economy. They cover a vast majority of the business population, account for a substantial number of jobs and contribute significantly to the gross domestic product. To promote a supportive environment in which these businesses can thrive, the quality and accessibility of the legal system play an important role. Within this context, the current study aims to provide a quantitative and representative overview of the disputes that small and medium-sized businesses experience, how they deal with them and how they evaluate existing legal provisions.

The so-called 'landscape of disputes' is evaluated from the perspective of Dutch businesses. Their counterparts include other businesses, staff members, citizens and the government. For the citizen's perspective on the landscape, we refer to the research report *Paths to Justice in the Netherlands* (also published by the Research and Documentation Centre of the Dutch ministry of Justice and Security; Ter Voert & Klein-Haarhuis, 2015a).

The study focusses on small and medium-sized businesses up to ten employees. These businesses are presumably more vulnerable than larger SME-businesses (up to 249 employees) when confronted with a conflict. They have less economic and legal resources as well as less experience with solving (potential) legal problems. Nevertheless, the present study provides insight into the lion's share of the business economy: 96% of all SME's are between one and ten employees in size.

The research questions are:

- How many businesses have experienced civil-law and administrative-law conflicts in the past year? What is the nature of these conflicts?
- How many businesses have turned to legal professionals and (extra) judicial proceedings in the past year? Which were these? And for what reasons did they decide not to use service providers and procedures?
- How did the most important conflict of the past year end, and what were the results of the approach taken?
- How do businesses assess the used services provided by legal professionals and ruling authorities?
- In general, how do businesses perceive their access to justice and what is their level of trust in the legal system?

Method

To answer our research questions, a survey among businesses was conducted. The sample was drawn from the General Business Register (ABR) of the Central Bureau of Statistics (CBS). From our target population of 778 thousand active SMEs up to ten employees, a random sample of 4,130 businesses was drawn. In September 2018, the selected businesses were invited to participate in our study by completing an online questionnaire. A total of 1,697 businesses participated in the survey – a response of 41%. Data were collected by the CBS on behalf of the WODC.

The English translation of the questionnaire can be downloaded from www.wodc.nl.

The results of the study will be described in the following two themes that were identified in our study: 1) businesses' conflicts and getting justice and 2) businesses' approach to their most important conflict (including the results of this approach and satisfaction with any legal services used). In reporting our results, we often weighted our sample to estimate the actual number of businesses within our target population.

Businesses' conflicts and getting justice

Quantity and nature of conflicts

Of the 778 thousand businesses, an estimated 274 thousand (35%) had one or more conflicts in the year preceding the survey. About 135 thousand businesses (17%) had one or more conflicts concerning purchases and 105 thousand (13%) about sales. These so-called trade conflicts (purchase and sales) were usually about the product itself, the payment, or the invoice. Other, less prevalent types of conflicts include labor disputes (mentioned by 51 thousand businesses; 7%) and conflicts about environmental and environmental nuisance (mentioned by 11 thousand businesses, 1%). Labor disputes are usually about performance (46%) and/or dismissal (34%), but (related) disputes about illness or leave (30%) and wages (19%) were also quite common.

The likelihood that a company experienced one or more conflicts was higher than the 35% average when the company was a family business, had one or more branch offices, was involved in multiple online activities, had internal and external legal resources, and/or dealt with only one supplier.

Opinions about getting justice

Many businesses were unable to give their opinion about getting justice. On questions pertaining to various aspects of this topic, 21% to 41% of the businesses filled in 'I don't know'. Many of these businesses (26% to 51%) did not have a conflict in the past year, indicating that a lack of experience may be the reason why they have no opinion on this. Only few businesses (6%) believed that, in general, it is easy for a business to get their justice. Others were indifferent (22%) or reported that getting justice is hard for a business like their own (36%). Reasons behind a negative evaluation include the expectation that legal proceedings are difficult and time-consuming, as well as the high costs that are expected to come along with such procedures. Yet, about half of the entrepreneurs consider it worthwhile to take legal action in the event of a serious conflict. About a quarter of businesses find it difficult to find a qualified legal service provider (24%) and one fifth believe that there are insufficient facilities for advice or assistance (20%). Around 10% have no faith in a fair decision by the court or in the craftsmanship of a lawyer. Businesses that have had a conflict in the past year are more negative about access to or trust in the legal system than businesses without a conflict.

Use of legal service providers

Of the estimated 274 thousand businesses with one or more conflicts, 62% called in one or more legal professionals to deal with their conflict. Usually this was a lawyer (24%) or accountant (24%), but also collection agencies (14%), legal expenses insurers (10%), tax advisor (9%), financial advisors (7%) and bailiffs (6%) are regularly consulted by businesses. On average, businesses hired collection agencies and bailiffs 1.7 and 1.6 times per year respectively, tax advisor 1.5 times and lawyers 1.4 times per year. Financial advisors are less frequently consulted (average 1.3 times per year), just like the police, and trade associations/organizations, legal

expenses insurers, and accountants (1.2 times average). When mediators are hired, this is almost always once a year (1.1 times average).

Cases that enter the legal service 'industry'

The current study allowed for the estimation of the total number of new cases originating from businesses up to ten employees that enter various legal service providers on a yearly basis. From this supply-perspective, the landscape is also quite diverse. The 'traditional' legal professional groups of lawyer and bailiff accounted for almost a quarter of the total market of conflicts in our study. The influx of cases was an estimated 74 thousand cases per year for lawyers and 27 thousand cases per year for bailiffs. Cases also flow in regularly to other service providers. This usually concerned accountants, collection agencies, financial and tax advisors and legal expenses insurers.

Deciding authorities

Approximately 16% of businesses with one or more conflicts needed a decision from a third neutral party and therefore went to an authority. Most businesses brought the matter to court (12%), some businesses requested a decision from an administrative complaints board or a Consumer Complaints Board (both 2%). Other decision-rendering bodies were rarely used. The frequency of using a court is estimated to be 1.4 times per year on average (by businesses that at least used court once).

In addition, we estimated the number of conflicts that enter various decision-making bodies on a yearly basis. More than two-thirds of these conflicts were brought to the court (68%). Other used instances were administrative complaints board (13%) and Consumer Complaints Board (6%). For a small part of the conflicts, online dispute resolution through a company like Paypal (7%), or arbitration (2%) was used. Some conflicts were dealt with by authorities that were not explicitly mentioned in the survey (4%).

Online tools

Approximately half of the businesses went online (as a first step) to tackle one or more conflicts. Usually this is about finding information, but the internet is also used to find a legal service provider, to get advice of such provider, or to use an online tool.

Businesses' approach to their most important conflict

Characteristics of the most important conflicts

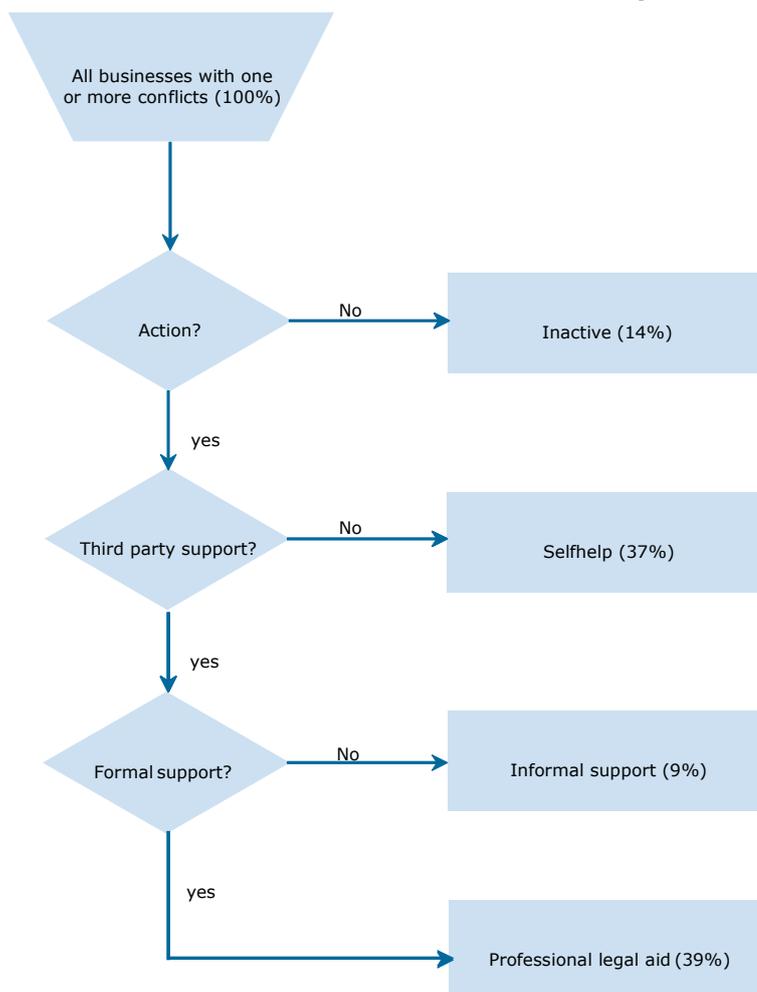
The most important conflict varies significantly in its topic, threat, consequences, counterparties, and duration. As far as its topic is concerned, the most important conflict of a business often pertains to trade (17% purchasing or 29% sales) and labor relations (10%). A substantial part of the conflicts (44%) concern various other topics such as damage, contracts, permits, taxes vandalism, intellectual property, nuisance, etc. Most major conflicts (64%) pose no or a very limited threat to the company. About 22% represent a moderate to strong threat and 13% a (very) strong threat. The two most frequently mentioned consequences of the conflict were the extra costs (158 thousand businesses; 58%) and the loss of customers / revenues (89 thousand businesses; 33%). In more than half of the conflicts the other party is another company (56%), in a quarter the other party is a private person/ own staff (25%), in a small part the other party is the government (13%) or other counterparties (5%). Approximately half of the businesses for whom the most

important conflict was completed, this conflict lasted for more than one month but less than one year (52%). About 17% of the most important completed conflicts lasted less than two years, and 31% lasted less than one month.

Addressing the most important conflict: legal assistance

Of all businesses, 14% can be classified as inactive because they have not taken action to tackle the problem (see Figure R1). Businesses that did take action can be subdivided into businesses that only do something themselves (37% of all businesses with a conflict), businesses that used informal help from their own network (family, business partner etc. , 9%) and businesses that have consulted a legal expert (39%). Many of these active businesses have been in contact with the other party: 96% of selfhelpers, 66% of informal help users and 66% of legal service users contacted their counterparty to resolve the issue. Professionals consulted to tackle the most important conflict include lawyers (35%), legal expenses insurers (14%), accountants (14%), collection agencies (7%) and bailiffs (7%). In trade disputes, businesses are more likely to choose to resolve the conflict themselves and in the case of labor disputes, the help of a professional is more often involved.

Figure R1 Followed strategy for dealing with the conflict (N = 274 thousand businesses with a conflict)^a



^a A number of businesses did not fit into the above scheme because they have taken a different type of action (1%) or have started proceedings without the help of a third party (1%).

Sometimes, businesses will refrain from hiring professional legal services after taking it into consideration. A quarter of the businesses reported that they have done so. Lawyers were most often considered but not hired (42%), but other legal services were dismissed as well such as collection agencies (19%), trade- and/or professional associations (16%), legal expenses insurers (15%), mediators (13%), etc. Businesses refrained from engaging legal services because they thought it was too expensive (31%), it would take too much time or effort (25%) or it would not improve the situation (22%). This does not mean that, in the end, they did not receive legal assistance at all. About 40% still requested legal aid, yet not with the particular professional that was taken into consideration. The businesses that considered yet refrained from any type of legal support most often decided to do it themselves (33%), to do nothing at all (10%) or to ask a friend / friend for advice or help (15%).

Whether or not a business consulted a legal professional was statistically significantly predicted by: the subject and the severity of conflict, duration and number of consequences of the conflict, the starting year of the company and whether or not to have a contract with a legal service provider. Calling in legal assistance is more likely when the conflict has more impact, is perceived as more serious, lasts longer and when the business has a contract with a legal service provider. Businesses are less likely to seek legal assistance if the dispute is about purchasing or if the company is less than four years old.

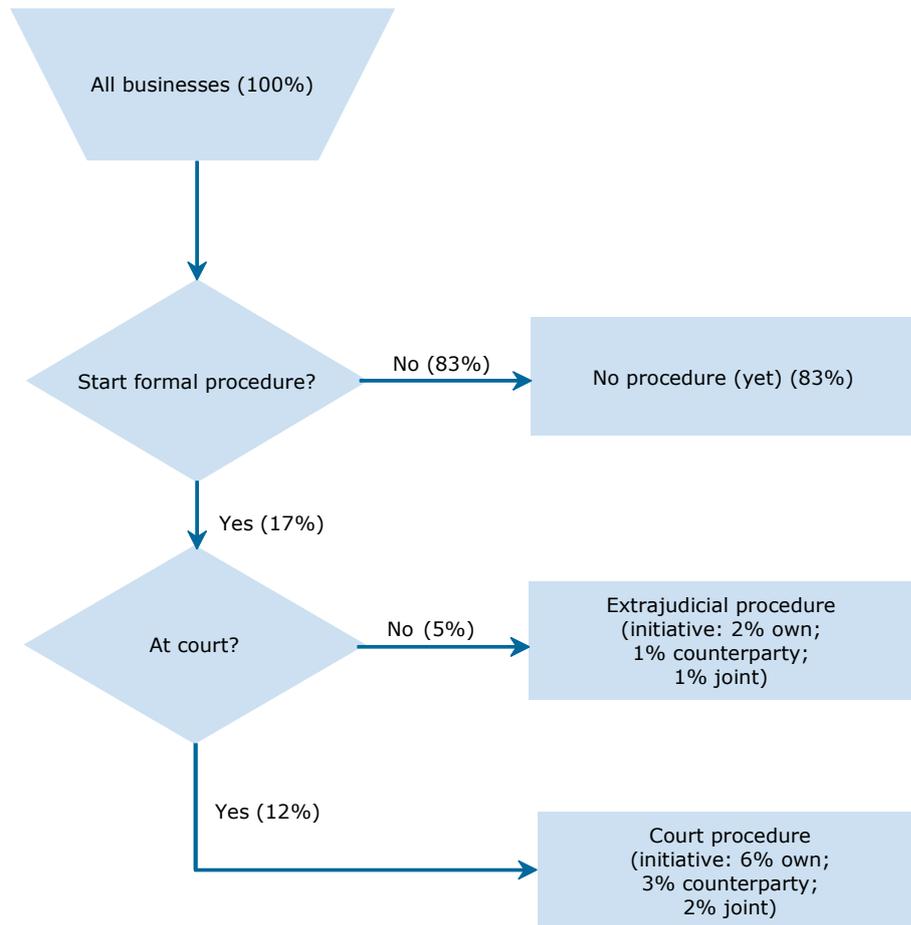
Addressing the most important conflict: (extra)judicial procedures

About 17% of the businesses had to deal with a deciding authority, whether or not at their own request. Approximately 12% have gone through judicial and 5% extra-judicial proceedings (see Figure R2). Approximately 6% of all businesses initiated legal proceedings themselves. 3% of these procedures was at the initiative of the other party and 2% was a joint decision.

It is not uncommon for a company to refrain from a procedure after having taken it into consideration. This concerns 9% of all businesses with a conflict (a total of 23 thousand businesses), whereby a court (11 thousand businesses; 4%) and a Consumer Complaints Board (9 thousand businesses; 3%) are most often considered, yet not employed. To a lesser extent, after consideration, the following bodies were refrained from: an administrative complaints board, an arbitration committee, a foreign dispute body, or online dispute resolution at a company such as PayPal. These bodies together concern 3% of the businesses. The most frequently cited reasons are that it is too expensive (13 thousand businesses; 5%), takes too much time (12 thousand businesses; 5%) and involves too much trouble (8 thousand businesses; 3%).

The involvement of an deciding body is predicted by four characteristics: the duration of the conflict, the other party, international trade, and membership of a consumers complaints board. The longer the conflict lasts, the greater the likelihood that a deciding body gets engaged or vice versa. The probability is, for example, 45% for conflicts that last two years or longer, compared to 6% for conflicts that last less than a month. Compared to private counterparties, conflicts with the parties who were "different or unknown" had a smaller chance to end in an (extra) judicial procedure (15 percentage points). Businesses that export abroad do not import or export, compared to businesses, a smaller chance that an (extra) judicial procedure is involved (16 percentage points). If the company is affiliated with a consumers complaints board, the chances that a conflict will end up in an (extra) judicial procedure than businesses that are not affiliated (9 percentage points difference).

Figure R2 Use of decisive authority to deal with the most important conflict

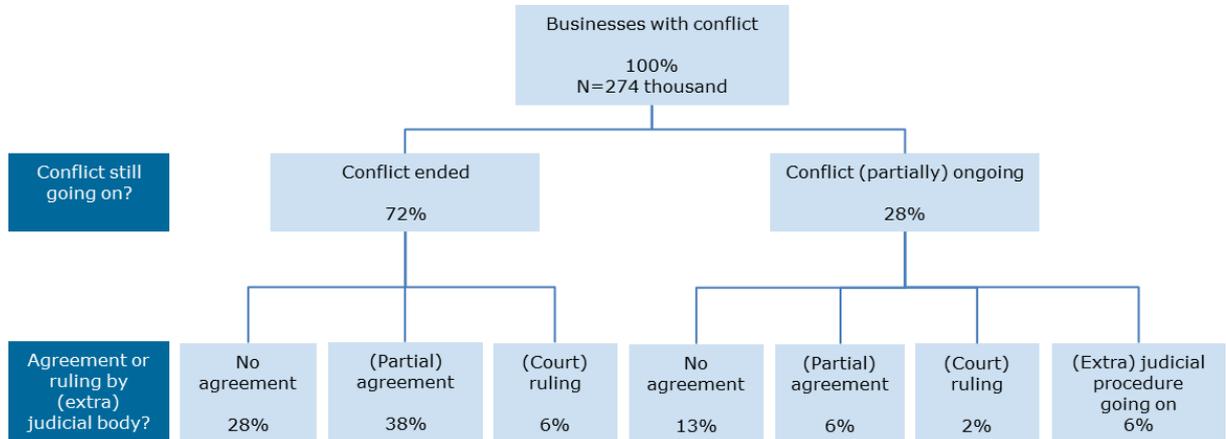


Note: See table b8.8 and b8.9 in Annex 8 for underlying figures.

The end of the most important conflict

Some conflicts were not yet expired at the time businesses responded to the questionnaire. Approximately 72% of the businesses indicated that the conflict had ended: 28% reached no agreement, 38% (partial) agreement and 6% ended in a decision by an (extra) judicial body. For the remaining 28%, the conflict was still (partly) continuing and actions may still be taken: 13% had not (yet) reached an agreement, for 6% the procedure was still ongoing and some reached already a (partial) agreement with the other party (6%) or an (extra) judicial body made a decision (2%), but the conflict was still ongoing and it is possible that further (legal) actions will be taken.

Figure R3 End of the conflict (in % businesses)*



* Weighted statistics, all percentages compared to 100% businesses with conflicts.

Note: See table b9.1 in appendix 9 for underlying figures

Valuation of the outcome

Entrepreneurs could evaluate the outcome in several ways. They were asked a) to what extent they think the conflict has been resolved; b) whether the (court) ruling was to their advantage or disadvantage; and c) how satisfied they are with the agreement, the (court) ruling and the outcome in general.

For around a third of the entrepreneurs the conflict had not (yet) been resolved. Unsurprisingly, entrepreneurs who had not (yet) reached an agreement with the other party far more often reported that the conflict was not resolved than those who reached a (partial) agreement.

Approximately 20% of the entrepreneurs who received a (court) ruling, thought the conflict had not been resolved. A third is (very) dissatisfied with the (court) ruling and, furthermore, a third reported that the (court) ruling was to their disadvantage. About 29% of the entrepreneurs whose conflict has ended were (very) dissatisfied with the outcome in general. and a fifth with the (partial) agreement.

Valuation of the service provider and (extra) judicial body

On the whole, most entrepreneurs were (very) satisfied (67%) with the service provider they contacted; about 11% is (very) dissatisfied. They were most satisfied with aspects such as listening to the problem, accessibility, compliance with agreements and explanation of legal aspects and legal steps. Entrepreneurs were least satisfied with regard to cost aspects, such as the amount of the invoice or the uncertainty about costs in advance. They judged lawyers more negatively about the cost aspects than the other service providers, while they judged lawyers more positively when it comes to explaining legal aspects.

Around a quarter of the entrepreneurs who were involved in (extra) judicial proceedings were dissatisfied with various aspects of procedural justice, such as being adequately informed, equal treatment and feeling heard.

Valuation of access to justice and trust

All in all there were relatively many entrepreneurs with a conflict who have a negative opinion about access to justice and trust in the legal system in general. These entrepreneurs were the most negative about the costs of legal advice or court proceedings. About half consider control over the costs to be a problem.

Moreover, more than half considered access to justice to be difficult (59%) and thought court proceedings to be difficult (55%) or time-consuming (73%). Entrepreneurs were a little less negative about finding a legal service provider: about a third thought there are insufficient facilities for advice or assistance or found it difficult to find a good legal service provider. About a quarter of the entrepreneurs who experienced a conflict, had no faith in a fair decision of a judge, 13% had no faith in the craftsmanship of a lawyer and 30% had little expectations from legal action.

The general picture is that differences in business characteristics make little difference to the outcomes that businesses achieve or the judgments they have about the services used and the legal system in general. This group of businesses may already be so specific that the variation in characteristics within this group is too small to lead to substantial differences in outcomes or judgments.