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# Assessment of the Law on passing on the costs of supervision and disciplinary law to legal professions

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Summary of the final report

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# I Contents

<b>S Summary .....</b>	<b>4</b>
S.1 Purpose of the study.....	4
S.2 Intended purpose of the legislation .....	4
S.3 Assessment of the legislation by the parties involved.....	5
S.4 Recommendations.....	7

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## S Summary

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### S.1 Purpose of the study

The Dutch Government's Research and Documentation centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC*) commissioned a study into the intended and unintended consequences of the Law on passing on the costs of supervision and disciplinary proceedings to legal professions (*Wet doorberekening kosten toezicht en tuchtrecht juridische beroepen*), hereinafter referred to as the 'legislation'. This study has resulted in an understanding of the extent to which the objectives of the legislation have been achieved and side effects produced. On the basis of the study's findings, recommendations have also been made to improve the effect and impact of the legislation.

The legislation governs the handling of the costs incurred by the State for supervision and disciplinary proceedings with regard to the three legal professions: judicial officers, notaries, and advocates. In the case of advocates, this only concerns the costs of disciplinary proceedings, since supervision costs are already entirely financed by that sector. The State's costs are passed on to the public-law professional associations for the three professions: the Royal Professional Organization of Judicial Officers (*Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders, KBvG*), the Royal Dutch Association of Civil-law Notaries (*Koninklijke Notariële Beroepsorganisatie, KNB*), and the Netherlands Bar (*Nederlandse Orde van Advocaten, NOvA*). The legislation lays down rules on the procedures for contributions by the professional associations to budgeted costs (responses to government consultation) and on the final settlement of costs, from which revenue from disciplinary proceedings (court fees, costs of proceedings, and fines) are deducted.

There are large discrepancies in both the number of professionals and the number of practices between the three professions. In 2021, there were 631 judicial officers working at 145 practices, 3,415 notaries working at 915 practices, and 18,108 advocates working at 5,589 practices; these numbers included fully-fledged practitioners, junior professionals, and those still in training.<sup>1</sup>

Written sources and individual/group interviews were used to carry out the research. The written sources concerned legislation and regulations, other parliamentary documents, official documents of the Ministry of Justice and Security, policy documents and reports from the professional associations concerned, and Civil and administrative justice (*Rechtspleging Civiel en Bestuur*) published by the Research and Document Centre (WODC). Individual and group interviews were conducted with staff from the Ministry of Justice and Security, representatives of the professional associations, the Dutch Financial Supervision Office (*Bureau Financieel Toezicht, BFT*), the disciplinary bodies of first instance, and the Court of Appeal.

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### S.2 Intended purpose of the legislation

The primary objective of the legislation, namely to reduce the State's costs, has been achieved, as the costs formerly charged to the State are now charged to the professional associations. This represents a saving of around EUR 8.6 million per year, consisting of EUR 8.3 million of costs passed on and EUR 0.3 million of revenue (from disciplinary proceedings), excluding additional administrative costs borne by the State and the other parties.

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<sup>1</sup> Source: WODC, *Rechtspleging Civiel en Bestuur* 2021.

**Table S.1: Costs passed on in 2021. Source: Ministry of Justice and Security documents**

	No. of practitioners*	Gross costs** (in EUR 1,000)	Revenue (in EUR 1,000)	Costs passed on*** (in EUR 1,000)	By practitioners*** (in EUR)
<b>Judicial officers</b>	<b>631</b>				
BFT		1,226		1,226	
Costs of disciplinary proceedings (First instance)		587	69	518	
Costs of disciplinary proceedings (Appeal)		84	13	71	
<b>Total for judicial officers</b>		<b>1,898</b>	<b>82</b>	<b>1,816</b>	<b>2,877</b>
<b>Notaries</b>	<b>3,415</b>				
BFT		3511		3511	
Costs of disciplinary proceedings (First instance)		1366	192	1175	
Costs of disciplinary proceedings (Appeal)		421	95	326	
<b>Total for notaries</b>		<b>5,298</b>	<b>287</b>	<b>5,011</b>	<b>1,467</b>
<b>Advocates</b>	<b>18,108</b>				
Costs of disciplinary proceedings (First instance)		967	****	967	
Costs of disciplinary proceedings (Appeal)		469	****	469	
Total for advocates		1,435	****	1,435	79
<b>TOTAL</b>	<b>22,154</b>	<b>8,631</b>	<b>369</b>	<b>8,262</b>	<b>373</b>

\*) Source: WODC, *Rechtspleging Civiel en Bestuur 2021*. \*\*) excluding the Ministry's administrative costs. \*\*\*) excluding the professional associations' administrative costs.

\*\*\*\*) The Netherlands Bar collects this revenue itself, so it is not deducted by the Ministry.

The second objective of the legislation was to more efficiently structure the way in which quality and integrity are monitored within the professions by means of financial incentives. None of the professional associations have improved their quality and integrity monitoring *as a result of the legislation*. Quality and integrity monitoring was already a priority for all of these professional associations; however, all three reported that this legislation has not provided any additional motivation. That said, it has been shown that it takes more time, whether or not due to administrative tasks, to implement the legislation – time that would otherwise be spent on the primary process, which is more to the detriment of quality improvement than to the benefit of it.

### S.3 Assessment of the legislation by the parties involved

The group discussions and interviews revealed that none of the professional associations or supervisory and disciplinary bodies are in favour of the legislation; rather, they have had primarily negative experiences of its effects. All of these, as well as the Ministry, need to spend additional time on implementing the legislation, which has not led to better-quality assurance or service. At the same time, the expected savings by the State are limited.

There have been unnecessary tensions between the professional associations on the one hand, and supervisory and disciplinary bodies on the other, caused by the new role that the legislation has placed on the professional associations as the main financing bodies of supervisory and disciplinary law. Moreover, none of these entities agreed with the principle that all costs should be passed on. The general interest in proper supervision and disciplinary proceedings for judicial officers, notaries, and advocates goes beyond the interests of the professions concerned. The following specific findings have emerged:

1. **The principle of the ‘user pays’ is not consistent with passing on costs to the professions.**

All the relevant professional associations and supervisory and disciplinary bodies argue that there is also a general interest in the proper functioning of supervisory and disciplinary law, and that at least some of the costs should therefore be covered by general funds. There is also an individual interest for users of the services, which justifies passing on the costs to them. This is possible in the case of notaries and advocates, but not – or at least it is restricted – in the case of judicial officers. Finally, the three professions do not understand why costs for disciplinary proceedings are passed on only to the three legal professions and not to the other professions to which disciplinary law applies.

2. **The system of responding to government consultation entails relatively high implementation costs.**

There are additional administrative costs for all parties involved, including the Ministry, in implementing the system of responding to government consultation (sometimes followed by objections), new rounds of consultation, and the time spent on research. In addition, these additional efforts do not help to improve quality.

3. **The system of responding to government consultation conflicts with the independence of supervisory and disciplinary law.**

All the parties involved (professional associations, BFT, and disciplinary bodies) believe that the idea of the professional associations having to provide the funding and the system of responding to government consultation conflict with the independent position of supervisory and disciplinary law; this is because of the influence that those under supervision have on the supervisory body’s budget and the influence that those covered by disciplinary law (practitioners) or those who may lodge a complaint (professional associations) have on the budget of disciplinary bodies. In practice, this has also led to friction between the professional associations and the supervisory/disciplinary bodies, which is unfortunate for all parties, and the Ministry is failing to provide guidance or mediation. There is tension, both in the legislation and in its practical implementation, between the independence of the funded bodies, the funding by the professional associations, and the role played by the Ministry.

4. **The system of responding to government consultation has not had a material impact on costs.**

Responding to government consultation has not affected the level of budgets or made the professional associations any more efficient. The right to hear professional associations’ views prior to budget decisions being taken by the Minister, which is explicitly enshrined in law and provides the framework for the professional associations to give the views, has therefore been described by the professional associations as ‘frustrating’ or ‘just for show’.

5. **The order to pay the costs of proceedings has led to reduced costs, but also has side effects.**

The aim of the order to pay the costs of proceedings was to ‘make the polluter pay’ (i.e. the professional who made the mistake), thereby reducing the remaining costs for the professional associations. Revenue amounted to EUR 54,000 for judicial officers and EUR 214,000 for notaries in 2021. For advocates, revenue has risen due to increased tariffs because of the new charges borne by the State.

The amount of costs for proceedings is perceived as high by the practitioners concerned, especially if an appeal is lodged. Therefore, there are indications that costs of proceedings are perceived as an additional penalty. Calculating behaviour has also been observed (paying off a disciplinary complaint at the preliminary phase before the complaint is actually lodged, foregoing appeal). The perceived additional penalty and professionals’ efforts to avoid it can be considered to be negative side-effects. There is no proper view of professionals’ concerns (whether the complaint is to be resolved effectively or simply paid off). Further research could perhaps shed more light on this.

6. **Court fees are prohibitive and have led to a limited reduction in costs, but the effects are not fully understood.**

The introduction of the court fee to lodge disciplinary proceedings was intended to lead to a reduction in the number of trivial claims and therefore lower disciplinary the costs of proceedings for the professions. In 2021, court fees generated EUR 19,000 for judicial officers and EUR 17,000 for notaries. Advocates already had to pay court fees in the first instance, so the legislation have not impacted revenue in this respect. The professional associations believe this is a limited amount in relation to the costs passed on.

The extent to which the number of complaints has decreased appears to vary by profession. The largest decline is for judicial officers (down by half); in the case of notaries and advocates, there has been a more limited reduction in the number of complaints. The intention was to prevent trivial and repeated complaints from being lodged, but it has become clear that all three professions still receive these kinds of complaints. Moreover, it is not known to what extent the court fee has acted as a barrier to lodging more serious complaints. Judicial officers, in particular, fear that even well-founded complaints will no longer be lodged because the court fees are perceived to be high. However, the number and type of complaints that are not lodged because of the court fee is not known. Further investigation is needed to find out.

7. **Fines have led to very limited cost reductions.**

It has been found that very few fines have been issued and the revenue from them is limited. It can therefore be concluded that this measure has hardly achieved its intended effect of cost reduction.

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## S.4 Recommendations

### *Improve the effect of the legislation*

Based on the study's findings, Cebeon makes the following recommendations within the current legal framework for passing on costs of supervision and disciplinary proceedings:

A. **Replace the system of responding to government consultations on budgets with another system.**

In order to reduce administrative costs, overcome tensions over the absence of financial impact, and resolve the conflict concerning the independence of bodies, it can be examined whether another system of passing on costs is cheaper and less frustrating for all parties. This can be done, for example, by setting a multi-year budget or switching to a contribution-based scheme.

B. **Have the Ministry take on more of a steering role.**

We recommend further developing the Ministry's administrative role, applying transparent assessment criteria, laying down clear guidelines for budgeting and cost settlement, and mediating where there is tension between different parties.

C. **Allow judicial officers to pass on costs to clients as well.**

Unlike notaries and advocates, judicial officers cannot pass costs on.<sup>2</sup> As a result, the legislation puts pressure on judicial officers' bottom line.

D. **Investigate the positive and negative effects of court fees and costs of proceedings.**

There are indications that these mitigating measures have led to undesirable effects on disciplinary

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<sup>2</sup> These are bound by specific rates under the Judicial Officers' Fees Decree (*Besluit tarieven ambtshandelingen gerechtsdeurwaarders*).

proceedings and learning capacity within the profession. Since this could not be determined in the present study, we recommend that this be investigated further.

***review policy***

In addition to the above recommendations, based on the evaluative input of the different parties, there are two areas where we believe policy should be reconsidered.

While savings have been made, the question is whether the costs (for all parties) have been balanced against the benefits in recent years. Carrying out a societal cost-benefit analysis can help to better understand this. However, it is necessary to consider all the costs and benefits together.

In addition, it is questionable whether passing on the full costs is in line with the principle of the ‘user pays’, with it being noted that supervision and disciplinary law also benefit non-professionals, and the view that disciplinary law is primarily a government duty is widely shared by all parties in the field. It is therefore worth reconsidering the extent to which costs are passed on.

Finally, the decision to pass on the costs in question to these three professions only, while there are six other professions covered by disciplinary law, raises the question of whether it would be appropriate to consider a more generally applicable policy on passing on costs.