

Royal Dutch Organisation of Bailiffs ('KBvG')
Report
Filter Model

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1. Management summary

This Interim Report is the conclusion of the study that was conducted under the authority of the Royal Dutch Organisation of Bailiffs (*'Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders'* or *'KBvG'*). This study on the form and benefits of the filter model was conducted by the Supervision Group consisting of members and board members of the KBvG and of external consultants of Capgemini Consulting.

The KBvG was represented by Mrs K. Weisfelt, director of the KBvG, J Wisseborn, chairman of the KBvG, J. de Swart, board member of the KBvG, and O. Jans, member of the members' council. Capgemini Consulting was represented by principal consultant Dr. M. Folpmers and consultant J. Willequet, MSc. The participation of the board of the KBvG in the study consequently indicates the importance of the filter model.

The subject matter of the filter model is the manner how the complete collection procedure is followed. This particularly regards the interpretation of all steps from start (a client with an overdue payment of a debtor) to finish (the recovery of the claim from the debtor on a legal basis).

The objective was to elaborate what the effects of application of the filter model are. To this end this study made a distinction between the existing situation (the AS IS situation) and the future situation as outlined in the filter model (the TO BE situation). An elaboration of the process steps within the AS IS and the TO BE situations enabled the Supervision Group to arrive at a structured description of the effects of the filter model.

The structured description of the model provided insight into the benefits that the filter model can bring about. These benefits of the filter model can be found in five aspects: (1) the isolation of default proceedings, (2) an effective deployment of alternative dispute resolution, (3) a distinction between collection cases based on communication channel and legal area, (4) the adjournment of collection cases, and (5) intensive questioning of the debtor prior to the issue of the writ of summons. This results in a decrease of the number of collection cases that ends up in court and in an increase of the efficiency with which the court can handle these cases.

On the basis of the expertise available within the Supervision Group a prudent estimate was made of the quantitative benefits of the filter model. In combination with figures available in the public domain it was possible to calculate the estimated scope of these benefits. This appears to regard an amount of €47 million per annum, a decrease of the net costs by no less than 60%. Thus this study demonstrates that the benefits of the filter model are substantial and that the filter model can be a valuable



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innovation for the Dutch Ministry of Security and Justice and the judicial system. The Supervision Group does, however, recommend a thorough study with all concerned parties in order to arrive at a solid financial business case for the filter model.

The Supervision Group unanimously endorses the conclusions in this report.

2. Introduction

In this chapter the reason for the KBvG to study the filter model is discussed. Then it is indicated what the scope of the study is. The method of the Supervision Group that, in association with an external consultant, documented the filter model is also discussed.

In chapters 3 and 4 the AS IS and the TO BE models are, respectively, fully elaborated and discussed. In chapter 5 the conclusions based on this comparison are drawn, divided into a qualitative and a quantitative analysis. References and appendices that belong to this study have been included in the last two chapters.

2.1 Reason

The KBvG is of the opinion that it is appropriate and possible to separate cases that are not about dispute resolution but about judicial establishment of a claim by judgment from other cases; the latter at an earlier stage than under the existing regulations of the judicial process. The share of the first mentioned proceedings in the total number of cases in the relevant category can be deduced from the percentages of the non-appearances in all commercial cases. It follows from figures of the Council for the Judiciary that in 2007, 2008 and 2009, respectively, the inflow of sub-district commercial cases, expressed in numbers of issued writs of summons, amounted to 487,625, 555,763 and 602,633, respectively. The associated non-appearance percentages were 71%, 73% and 75%, respectively. The inflow of commercial cases at the civil-law sector amounts to 34,236 in 2007, 36,505 in 2008 and 40,802 in 2009. The corresponding non-appearance percentages were 35%, 35% and 40%, respectively.

In the opinion of the KBvG a distinction must be made at the earliest stage possible between cases that can be settled through non-appearance and cases where defence must be put forward and where the court shall therefore need to settle the dispute. In his explanatory notes to the Innovation Agenda Minister Opstelten writes that the system of dispute resolution must be up to date and must anticipate the changing wishes and needs of society.

This Innovation Agenda of the Minister and the aforementioned standpoint of the KBvG were reason for the KBvG to conduct a study on the filter model proposed by the KBvG. The expected benefit of this filter model is the saving on costs that can be realised with this alternative method for the initiation of collection cases. It is about the saving in the chain as a whole and it therefore regards various interested parties, not just the bailiff but also the creditor, the debtor, the court registry and the court. It



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is also a proposal that is supported and feasible, in conformity with the wish of the Minister.

The KBvG wishes to have the saving on costs that can be realised with the filter model established objectively. This report takes the first steps towards this.

2.2 Scope

The scope of the report is a systematic process description of the current processes in the chain from the start of the collection up to the acquisition of the title in the legal process, as well as a description of these processes in conformity with the vision of the KBvG for the future: the filter model.

Starting point for the modelling and systematic process description is a model that represents the bulk (95% to 99%) of the files.

In addition to this filter model there are, however, still other visions for the future. A first possibility is to replace the writ of summons in the legal phase by a petition where the role of the bailiff is taken over by the court registry. Another possibility is to model the proceedings on the basis of the structure of the European Order for Payment Procedure (EOPP). These visions for the future fall beyond the scope of this study, which merely focuses on the filter model. For the sake of completeness we provide a brief argumentation with regard to these alternatives in this chapter.

2.3 Method

A first description of the filter model was available and has been included in the appendix ([1], reference is also made to the publication in Executief [2]).

The filter model was further described with the help of various sessions with the Supervision Group (see below). These sessions took place in the second and third quarter of 2012. In order to enable the clearest description of the current (AS IS) method and the filter model as possible process modelling techniques were used. These techniques were applied with the help of the software package MS Visio.

2.4 Supervision Group

The Supervision Group consists of the following people:

- Mrs K. Weisfelt, LL.M., director of the Royal Dutch Organisation of Bailiffs (KBvG);
- J. Wisseborn, LL.M., chairman of the board of the KBvG, bailiff practicing in Harderwijk and owner of Jongejan Wisseborn Gerechtsdeurwaarders;



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- J. de Swart, LL.M., board member of the KBvG (training portfolio) and bailiff practicing in The Hague;
- O. Jans, LL.M., assigned junior bailiff practicing in Groningen;
- J. Willequet, MSc., consultant at Capgemini Consulting;
- Dr. M. Folpmers, principal consultant at Capgemini Consulting.

2.5 Brief argumentation with regard to alternative visions for the future

a. A petition in lieu of a writ of summons

The Supervision Group is familiar with the fact that there are visions where the writ of summons as instrument instituting the proceedings is replaced by a petition. Thus a part of the activities of a bailiff is taken over by the court registry¹. This mostly regards the activities between ‘to the legal process’ and ‘the court registry prepares the case’.

Several arguments are presented for the abolishment of the writ of summons, e.g.:

- The bailiff is an additional person who plays a role in the collection proceedings and that makes the proceedings more complicated and more expensive;
- The bailiff is a cost-technical threshold;
- Bailiffs sporadically refuse collection cases based on commercial considerations. It goes without saying that a statutory duty of office is not applicable to the amicable phase.

These arguments that advocate replacement of the writ of summons by the petition are opposed by the following arguments that advocate maintenance of the writ of summons as instrument instituting the proceedings:

- The polluter pays; instead of the costs of the legal assessment of the document instituting the proceedings being borne by the tax payer as the court registry needs to perform work and will need to be equipped for the same in terms of manpower and expertise, the costs of a correct institution of the proceedings are borne by the party who renders these legal proceedings necessary;
- The legal correctness of the document instituting the proceedings is of crucial importance to, on the basis of the judgment that the court will ultimately deliver, have the bailiff take enforcement measures;
- From a constitutional point of view a model where the court registry supplements petitions in a legally technical manner forms an undesired phenomenon as it is in breach of the independence of the judiciary. Where the

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¹ For a complete overview of the activities that need to be taken over by the court registry or that will disappear from the proceedings, reference can be made to the figures of the AS IS situation, reference is made to Figure 1 and Figure 5.



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claimant is assisted as the court registry points the same to the fact that the petition is, for instance, not directed against the correct legal person, the respondent will need to be able to expect the same level of assistance of the court registry;

- The bailiff *also* looks after the interests of the debtor by providing information and by referring to institutions for debt counselling; the court registry will most likely no longer fulfil this role;
- When issuing the writ of summons there is, in most instances, personal contact with the person who is invited to participate in legal proceedings.

b. Proceedings based on the European Order for Payment Procedure (EOPP)

The European Order for Payment Procedure (EOPP), effective as from 12 December 2008, makes it possible to claim in cross-border civil and commercial collection cases without defence. This is a uniform procedure with forms that can also be completed electronically. The objective is to simplify and expedite the deliberation of undisputed cases in the event of cross-border cases. Upon receipt of an EOPP the respondent can submit a statement of defence, in that case the proceedings will be held before the courts of the Member State of origin according to the national civil law.

The objective hereof is to keep the acquisition of a right to enforcement in collection cases at the lowest possible threshold and to additionally save on costs. A consequence is that professional parties will enter into discussions as a result of which less work is requested of the court registry. The most important concern is that a parliamentary survey demonstrated that the forms in this kind of procedure are completed badly, which provides for additional (unnecessary) costs and loss of time.

3. The AS IS model

The AS IS model reflects the current method in those cases where the debtor leaves a financial claim unpaid and where the creditor decides to take steps in order to accomplish payment. The AS IS model has been divided into two processes, i.e. the collection process (reference is made to Figure 1) and the legal process (reference is made to Figure 5). Both figures are provided in appendix in page-sized versions.

The following actors can be distinguished in both processes:

- The principal;
- The debtor;
- The bailiff;
- The court / court registry.

3.1 The AS IS model for the collection process

[...]

Figure 1: AS IS collection process

The amicable phase starts with the award of the commission by the principal. This principal can be the creditor or a person who represents this creditor (usually a lawyer or a debt collection agency). After a check of the (financial) claim of the principal a first check of the debtor is carried out where a possible suspension of payment, the Dutch Debt Management (Natural Persons) Act, insolvency or administration are checked. After that harmonisation with the principal takes place where the bailiff indicates to what extent collection proceedings can be successful or meaningful. These steps are shown in Figure 2.

[...]

Figure 2: AS IS, start of the collection process

The principal can further to the harmonisation decide not to proceed with the collection proceedings, after which completion follows.

If the principal wishes to proceed then a demand for payment is sent. This includes a payment term. After the expiry of this term the debtor will be in default. At this point the payment must also be effectuated to the bailiff. In reaction to this demand for payment the debtor can pay the debt in full. This includes the additional costs as a result of the instituted collection proceedings.

If payment in full fails to materialise then the bailiff will take various other actions, like repeated demands for payment, a reminder by telephone or the proposition of a payment scheme. These subsequent steps are shown in Figure 3.

In specific instances the bailiff can also physically visit the debtor and/or a demand letter is sent.

[...]

Figure 3: AS IS, collection process: interaction with the debtor

By way of a final action a notice of summons is given. If the debtor pays in full after these actions then completion follows with the principal and the file is closed.

If payment in full fails to materialise then a second harmonisation with the principal follows. The latter decides on the basis of all the available information as to whether the matter is continued in the form of a legal process. These decisions can also be taken by the bailiff on the basis of a protocol that has previously been established with the principal. These last steps are shown in Figure 4.

Regardless as to whether the file has been submitted in proceedings, a bailiff very regularly carries out independent checks in respect of all active files. This way it is checked as to whether the debtor has meanwhile been admitted pursuant to the Dutch Debt Management (Natural Persons) Act and/or a different creditor has, perhaps, imposed an attachment on the belongings of the debtor. Meanwhile the debtor may have also died or other changes may have occurred in the legal status of the debtor. These checks can affect any act of the bailiff and give cause to an accelerated harmonisation with the principal in terms of the possibilities and the sense of continuation of the collection proceedings.

These continuous checks in the proceedings are indicated in orange fields in the process model.

[...]

Figure 4: AS IS, end of the collection process

It must be noted that there is no communication with the court / court registry in the entire amicable process and that the latter mentioned actor neither performs any acts. Only when the collection process turns into the legal process will this party also be involved.

3.2 The AS IS model for the legal process

The start of the legal process, which can in its entirety be found in Figure 5, is shown in more detail in Figure 6.

[...]

Figure 5: AS IS legal process

The process starts with a substantive check of the submitted documents, which form the basis for the draft writ of summons. After all, a bailiff does not carry out many collection cases in the amicable phase; the documents are then supplied by a law firm or by a debt collection agency. The bailiff checks on technicalities, practical objections and possibly carries out checks that were not carried out in the amicable process. In the process model this step is indicated by a yellow line. All steps that take advantage of this substantive check are indicated in the same manner.

The advantages of this substantive check can be summarised as follows:

1. Fewer technicalities in the proceedings;
2. A higher effectiveness in the proceedings and in the implementation;
3. A higher pace of the proceedings;
4. A lower load of the judicial system;
5. Less damages and incurred costs on the part of the principal.

After the substantive check the preparation of the draft writ of summons follows. In exceptional instances a writ of summons is omitted and a winding-up petition is filed with the court or a request for a prejudgement attachment is filed with the preliminary injunction court. However, this regards different processes that are only applicable to a small minority of the cases, with considerable interests or with a high risk of withdrawal of possibilities of recovery.

[...]

Figure 6: AS IS, start of the legal process

A different group of exceptions is formed by cases that have a high degree of complexity, e.g. a financial claim within the framework of an estate or a divorce. However, the subject matter of this study is the bulk of the collection cases and said specific processes are therefore not discussed any further (reference is made to the guiding principle formulated within the framework of the scope in chapter 0).



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Due to the intention of issuing a writ of summons the case obtains a different legal status and it is possible to carry out some checks that, in derogation from the checks in the amicable phase, can only be carried out by a bailiff.

The first check is that of the Municipal Personal Records Database. If it becomes apparent that the address details of the debtor are not correct then it is required to restart the amicable phase. However, if the address was indeed correct then it is checked as to whether the debtor has been registered² for amicable debt counselling. In that case a writ of summons is usually out of the question and basically completion with the principal follows. If the debtor has not been registered then the writ of summons can be served. Here the bailiff determines, in accordance with the rules of procedure, on what date the hearing will take place. As a result of the checks previously carried out by the bailiff one is prevented from only summoning a general partnership and not the individual partners.

After that the writ of summons is served on the debtor. This implies that the bailiff physically pays a visit, reference is made to Figure 7.

[---]

Figure 7: AS IS, part of the legal process, interaction with the debtor

Here we notice two possible situations: either the debtor resides at the address pursuant to the Municipal Personal Records Database or the debtor cannot be traced. In the latter instance it rarely occurs, in consideration of the high costs and the low chance of success in practice, that the legal process is continued. In case of an untraceable debtor the file will not immediately be closed, usually the file is still kept open for some time as the debtor is occasionally untraceable for a limited period of time. If the bailiff does find the debtor then the writ of summons can be served. This act of the bailiff can result in several reactions.

It the most desirable scenario the debtor will pay the financial claim in full, after which the file is closed in consultation with the principal. Sometimes the debtor indicates that he wants to conclude a payment scheme. The principal can then, on recommendation of the bailiff and on the basis of its own preference and previous experience with the debtor, accept this proposal. The consequence is then that a payment scheme is concluded and the writ of summons is not submitted to the court registry. The principal can, however, also decide to refuse the proposal after which the legal process is continued with the submission of the writ of summons to the court registry. During this harmonisation the bailiff informs the principal of the possible defence as well as the insights that were gained during the issue of the writ of

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² This check is under development at the time of writing. Up to date a successful pilot is in place at the Rotterdam Credit Bank.

summons (e.g. the situation on the spot and communications of the debtor in relation to his financial (in-) ability).

[...]

Figure 8: AS IS, legal process, interaction with the principal

By decision to submit the writ of summons the case ends up with the court registry, usually via the bailiff. The substantive check of the bailiff did, for instance, ensure that the date is in accordance with the roster of the hearings. The court registry places the case on the cause list and on the date specified in the writ of summons the case is presented to the court. The debtor can put forward a defence at the hearing, after which judgment is delivered. The substantive check of the bailiff provided for a correct and complete submission of the writ of summons so that unnecessary procedural errors are avoided.

It is, of course, possible that full payment of the claim still takes place between the submission of the writ of summons and the hearing. In that case the case is stricken off the cause list, settled with the principal and the file is closed. This part of the process is shown in Figure 9.

If the court decides in favour of the debtor in the proceedings – the claim of the creditor is dismissed – then harmonisation takes place with the principal. The file is then closed. If the court sustains the claim of the creditor then various processes still follow. These can, however, all be summarised in the following three acts, also shown in Figure 10: the right is enforced, the claim is recovered, the matter is concluded with the principal.

[...]

Figure 9: AS IS, legal process, submission of the writ of summons

After the court registry has prepared the judgment it is usually sent to the bailiff. The latter processes the (financial) data from the judgment in his computer system and then the bailiff serves the judgment on the debtor. If payment fails to materialise then the bailiff will, in consultation with the principal, proceed with the enforcement of the judgment, usually through imposition of an attachment. It is important upon the service and the enforcement of the judgment that the specification of the claim in the writ of summons – and hence also in the judgment – has been formulated such that the judgment is practically enforceable. A simple example: the writ of summons and the judgment refer to an order to release ‘the silver service belonging to grandmother’. This will result in practical issues as it is not always clear what this specifically means or to which objects this order is specifically related.

After the claim has been recovered the file is closed after harmonisation with the principal. A note in this respect is that in cases where defence is put forward it is common practice to contact the debtor and to agree how and when the claim is paid. In those instances it is not always required to actually serve the enforceable title.

[...]

Figure 10: AS IS, conclusion of the legal process

4. The filter model

The filter model provides the TO BE method. It is, just like the AS IS model, divided into two processes, i.e. the collection process and the legal process.

The following actors can be distinguished in both processes:

- The principal;
- The debtor;
- The bailiff;
- The court / court registry.

In addition an element has been added to the legal process that represents the actions of:

- The actors surrounding the alternative dispute resolution: mediators and arbitrators.

These actors already have a role within the AS IS model, which will also be shown in chapter 5, however when the bailiff prepares the draft writ of summons there is no longer any formal connection with these forms of dispute resolution.

4.1 The filter model for the collection process

The filter model has the objective of creating a more efficient legal process and does therefore not alter anything in the amicable process. For an extensive description of the amicable phase in the TO BE situation we therefore refer to the description that is provided for the AS IS situation. The process model is shown in Figure 11.

The process models of the filter mode can also be found in the appendix in page-sized versions.

4.2 The filter model for the legal process

Upon the elaboration of the filter model the process in the AS IS situation is altered at various points. As already indicated, the *alternative dispute resolution* actor has been added to the legal process. In addition, some steps already existing in the AS IS situation have changed. The legal phase, including all changes, is elucidated in this part.

A diagrammatic presentation of the legal phase in the TO BE situation is shown in Figure 12.

[...]

Figure 12: filter model, legal process

The additional process steps also acquired a special code. However, existing steps with a new substantive meaning are indicated by an orange line.

4.2.1 Start of the legal process

[...]

Figure 13: filter model: start of the legal process

The first part of the legal phase is shown in Figure 13. This phase starts, like in the AS IS situation, with a substantive check of the supplied documents. The benefits of this check, in the AS IS situation indicated by a yellow line, are still applicable in the TO BE situation.

The substantive check of the supplied documents is expanded in the TO BE situation by some acts that can basically result in efficiency gains upon the issue of the writ of summons. All relevant process steps have orange borders. The innovation can be found in the fact that in this step the bailiff analyses and defines at the principal what type of dispute resolution within the statutorily provided options is preferred and what communication channels are suitable for the principal. A complete overview of the relevant parameters for the submission of the writ of summons to the court registry can be found in Table 1 at the end of this chapter.

Then the process goes through a number of steps identical to the AS IS situation. This is also logical as the checks at the Municipal Personal Records Database and the amicable debt counselling are useful and required.

When serving the writ of summons the process differs in a small but important detail: where the writ of summons in the AS IS situation indicates *on what day* the public hearing will take place, this provision will no longer be present in the writ of summons in the TO BE situation. In lieu thereof *the time limit* is determined within which the debtor can indicate that he wants to put forward a defence. This is an essential difference with the AS IS situation.

4.2.2 Service on and interaction with the debtor

[...]

Figure 14: filter model: part of the legal process, interaction with the debtor



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The following part of the legal process is shown in Figure 14. At this point in the process the service on the debtor changes: again the bailiff does not only analyse and define as to whether the debtor wants to put forward a defence but also what his preferences and possibilities are in terms of the type of dispute resolution and communication channel. In addition the bailiff explains what the possibilities of the debtor are, how he can put forward a defence and what time limit is available for this.

If the debtor cannot be traced then the deliberation of the case proceeds in the same manner as in the AS IS situation. When discussing this scenario the Supervision Group refers to a recent development where the costs for the acquisition of a title will strongly decrease in this situation. This is the result of the fact that the use of electronic means of communication and publication will be made possible in the legal process.

After the service of the writ of summons on the debtor there are, like in the AS IS situation, four different possibilities:

- 1) The debtor applies for a payment scheme;
- 2) The debtor puts forward a defence;
- 3) The debtor does not react; or
- 4) The debtor pays in full.

[...]

Figure 15: filter model: part of the legal process, interaction with the principal

If the debtor applies for a payment scheme then it is up to the principal whether or not to accept this. If a payment scheme is agreed on then the process ends with completion with the principal, reference is made to Figure 15. In this case it is also possible that the bailiff adjourns the case for the duration of the payment scheme. If the stipulated scheme is not complied with and has been dissolved then the bailiff can still submit the writ of summons. This is possible because the writ of summons does not specify a date for the hearing but a time limit within which reaction is required. If the principal rejects the proposal for a payment scheme then the request of the debtor will be included in the file by way of defence.

If the debtor indicates within the specified time limit that he wants to put forward a defence then the principal will be informed accordingly by the bailiff. The principal can then decide to submit the writ of summons to the court registry. The debtor is called to appear, via the channel agreed on by both parties, to put forward his defence. At this point the date of the hearing is established and both parties are informed accordingly. Then the writ of summons, accompanied by the notice to appear and, if received, the statement of defence of the debtor, are submitted.

Full payment is also the most desirable situation in the TO BE model. After payment the file is closed and settled with the principal.

If the debtor does by no means react then the bailiff submits the writ of summons to the court registry stating that the debtor did not inform to be willing to put forward a defence. This basically results in a judgment by default of appearance.

4.2.3 Submission of the writ of summons in the filter model

The changes in the filter model are all related to the main change, namely the manner how the bailiff submits the writ of summons.

In derogation from the AS IS situation, where all writs of summons are submitted to a given court without distinction, in the filter model the bailiff does make a distinction. He does this on the basis of different typical features of the file. These features can be found in Table 1 at the end of this chapter.

[...]

Figure 16: filter model: part of the legal process, submission of the writ of summons

In the first instance – as can also be deduced from the process model – the writs of summons are divided into two important flows: with or without defence. Here it is clear in advance for what cases the claim can be sustained by means of a judgment in default of appearance. Apart from the filtering on defence, in the second instance, enabled through questioning of the bailiff, the biggest possible part of the cases will be solved through alternative dispute resolution like arbitration or mediation. It is of utmost importance in this respect that the possibility to opt for alternative dispute resolution is proposed at the start of the dispute and not when a specific form of dispute resolution has already been opted for, e.g. in case of a proposal for mediation during a meeting in chambers before the regular court.

The idea is therefore that a claimant already indicates at the start to be susceptible to specific forms of alternative dispute resolution after which the bailiff also questions the respondent on this point. If both parties are willing to submit to an alternative then the case can be brought before this alternative body. If this ‘match’ is unavailable then the case will be solved in the traditional way, hence before the regular court. This filtering effect is shown in Figure 16.

Also in the instance without defence it can still occur that a case, for instance in pursuance of an agreement, ends up at an arbitrator. The majority of non-appearance cases does, however, end up before the district court. As in that case it is no longer

required within the judicial process to hold a hearing about the relevant case a judgment by default of appearance can immediately be delivered. As upon the submission of the writ of summons the court registry is already familiar with the fact that the bailiff did not receive any defence, the processing can be carried out even more efficiently.

Upon the submission of the writ of summons the bailiff can, through an even further division in flows, enhance the efficiency gains for the court / court registry. For instance, a distinction can be made between the cases where communication is possible electronically, in writing or orally. In addition it is also possible, depending on the extent to which efficiency can be found in a further division, to divide the writs of summons based on the nature of the case, possible complexity and the level of the debt. How the court will take maximum advantage of this division into flows must be organised in further consultation with the judiciary. For instance, the filter model makes it possible to comply with nearly all wishes of the court with regard to division of cases, however this has no adverse effect whatsoever in situations where the court does not desire division. The handling of the cases through arbitration and by the court is shown in Figure 17.

After the judgment has been delivered the legal phase continues in the same manner as in the AS IS situation: if the title is in favour of the creditor then the judgment is served and, where necessary, enforced. The process ends with completion with the principal. In the other instances – hence where a title in favour of the creditor is not obtained – the legal process ends with completion between the bailiff and the principal.

Table 1 contains the parameters that determine how the writ of summons can be submitted in the filter model. It goes without saying that this regards an initial layout and harmonisation about this will need to take place with the court / court registry.

Parameter	Defence	Communication channel	Type of dispute resolution	Nature of the case	Complexity
Specifics	Yes	Orally	Court	Supplier credit	Yes
	No	In writing	Arbitration	Employment	No
		Electronically	Mediation	Rent	

Table 1: Parameters that determine how and where a writ of summons is submitted to the court registry in the filter model

5. Efficiency gains available in the filter model

In this chapter we address the efficiency gains and other benefits that can be obtained in the filter model. In succession a qualitative approach and a quantitative approach are discussed.

5.1 Qualitative description of efficiency gains

The Supervision Group argues that there are at least five different ways of efficiency gains for the chain as a whole when applying the filter model. These have been summarised in Table 2.

The first efficiency gain can be realised from the structural isolation of the non-appearance cases and the separate submission of writs of summons with and without defence. The court registry and the court can thus process both flows separately; this way unnecessary activities can be avoided in non-appearance cases. This reduces the workload and consequently the processing costs.

The next efficiency gain can be realised as alternative dispute resolution has obtained an important place in the entire proceedings in the filter model. Here a bailiff will prevent, where both parties prefer mediation or arbitration, this case from ending up in court. This basically reduces the number of defended cases for the court and the court registry. The chance that parties opt for an alternative process is much bigger if this option is already presented at the start, like in the filter model, rather than when proceedings are already pending before a specific body, as currently the case where during a meeting in chambers before the regular court the option is presented to, still, opt for mediation.

Then it is made possible to handle a large number of the cases electronically or in writing. This is caused by the fact that the bailiff can translate the information of the principal and the debtor into a communication channel suitable for both parties and into a division into case type relevant to the court. The use of an electronic or written channel results in a significant saving on costs; the distinction between different legal areas enables an additional specialisation and cost reduction of the court.

The fourth efficiency gain is realised through a reduction of the number of cases that needs to be brought before the court. The bailiff prevents cases, where the service of the writ of summons was sufficient to obtain payment, from being submitted to the court. After all, in the filter model the date of the hearing has not been established upon the service of the writ of summons yet. In these instances the case is adjourned as long as the debtor complies with the payment scheme. If the debtor does not comply with the payment scheme then the writ of summons can still be submitted to

the court registry. Thus cases are adjourned by the bailiff and fewer cases end up before the court and at the court registry.

The final efficiency gain can be found in the intensive questioning of the debtor and other checks carried out by the bailiff. This way possible errors, as mentioned in Table 6, are detected. The bailiff thus avoids these errors from surfacing later, during the deliberation of the case by the court and the court registry. This way unnecessary acts of the court and the court registry are avoided.

Efficiency gain no.	Area of efficiency gain	Description of efficiency gain	Effect of efficiency gain
Eff-01	Isolation of non-appearance cases	Prevents activities at the court / court registry within the framework of the preparation of the hearing.	Reduction of the workload of the court / court registry.
Eff-02	Effective deployment of alternative dispute resolution (mediation, arbitration)	Bailiff analyses and defines as to whether the parties are willing to submit to alternative dispute resolution.	Reduction of the caseload of the court / court registry.
Eff-03	Bailiff distinguishes cases based on communication channel (orally, in writing, electronically), legal area (employment, rent, etc.), complexity (combined claim), level of the debt.	Distinction in cases results to a more efficient handling, e.g. via the sub-district court.	Reduction of the workload of the court / court registry.
Eff-04	Bailiff maintains close contact with the claimant and, where possible, the debtor.	Bailiff can adjourn cases up to a moment that (partial) payment is possible (if the principal agrees with this).	Reduction of the caseload of the court / court registry.
Eff-05	Intensive questioning of the debtor.	Prevents coordination problems later in the chain; costs are borne by the debtor instead of the court / court registry.	Reduction of the workload of the court / court registry.

Table 2: efficiency gains of the filter model

It must be noted that the additional acts that are requested of the bailiff (e.g. questioning the debtor and the separate submission of writs of summons) are changes that can quickly be implemented by the existing bailiffs without considerable costs. As a result of the existing market forces amongst the professional group of bailiffs the



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offices are already highly efficient and the existing IT systems are mostly suitable for these tasks. This implies that there will barely be question of an increase in the processing costs on the part of the bailiff.

The saving can therefore be summarised as follows: it is beneficial to the court / court registry in the form of a reduction of the caseload (fewer cases are presented) and a reduction of the workload (fewer activities in case of cases that are presented).

The efficiency gains are particularly realised owing to the fact that the bailiff is, on the one hand, able to reduce the *caseload* of the court / court registry:

- By structurally inducing the parties to, where possible, submit to alternative dispute resolution;
- By, where possible, adjourning cases.

On the other hand the bailiff can reduce the *workload* of the court / court registry:

- By isolating non-appearance cases where the debtor puts forward a defence;
- By presenting the remaining cases in a more differentiated manner, namely with distinction based on handling mode (where possible electronically or in writing) and legal area.

5.2 Other benefits of the filter model

The description of the filter model in the previous and the next element focuses on the benefits for the court and the court registry. There are, however, also benefits to be gained for other parties.

For instance the third efficiency gain described in Table 2 will also imply a big gain on the part of the concerned parties, in particular the principal and the debtor. Making use of an electronic communication channel can result in a substantial saving of time for both parties and can also reduce the use of, for instance, *dates on which parties are unable to attend*. In addition, the rights of the debtor are still guaranteed. A choice for an oral hearing is still possible in those instances where the law offers this possibility.

In addition the second efficiency gain will also result in an important social benefit. An effective use of mediation and arbitration prevents conflicts from being brought to a head in legal proceedings. This is particularly useful for parties who also depend on each other after resolution of the conflict, e.g. as can be the case with a tenant and a landlord. This way the court is only used for conflicts that cannot be solved in any other manner.

5.3 Quantitative description of efficiency gains

In order to gain insight into the scope of the benefits of the filter model the aforementioned qualitative description of the efficiency gains can be translated into specific numbers. It is noted with emphasis that this calculation was performed with a limited number of data that are available in the public domain. Hence this section has the objective of providing the most accurate estimate possible of the scope of the financial consequences of the filter model within the precondition of use of data from the public domain.

The first step in this respect is an elaboration of the cost structure for the judiciary of the AS IS situation. This elaboration can be found in Table 3. For each form of dispute resolution – court, arbitration and mediation – a distinction is made in some significantly different sub-flows. Per sub-flow it was retrieved what the number of presented cases is and what the handling costs per case are. The figures are related to the year 2010 as this is the most recent year with data available for all flows. The number of cases and the costs per case then result in a total cost price per sub-flow. This total must then be reduced by the estimated proceeds from court registry charges. The estimated net cost price for these forms of dispute resolution is, according to this calculation, approximately EUR 71 million.

Where arbitration and mediation are often for different reasons more inexpensive for the concerned parties than legal proceedings before the court, these forms of dispute resolution are also beneficial to the judiciary. After all, the judiciary does not incur costs for the disputes that are settled through arbitration or mediation. The total costs for the judiciary are therefore indicated separately.

This table clearly shows inefficiency in the AS IS situation: 4,311 of the 5,656 mediation cases were referred by the judiciary. These 4,311 cases unnecessarily go through a part of the judiciary – with defence – until it becomes clear that mediation can also result in resolution of the dispute. The majority of these cases are, however, related to family matters, only 497 are commercial cases.

A similar calculation can then be made for the TO BE situation where a similar number of cases and equal costs are assumed.

The TO BE situation is also calculated for the year 2010. A more extensive calculation takes the expected growth in the number of disputes and the level of the costs for dispute resolution into account. The different qualitative efficiency gains result in changes in numbers and prices; the assumptions about this can be found in Table 4. The meaning of these assumptions can also be found in the table.

The calculation of the costs for the judiciary within the TO BE situation is shown in Table 5. In this table all the fields that have changed for the sake of the assumptions about the TO BE situation in Table 4 compared to the AS IS situation are indicated in red. This implies that the total costs change for each sub-flow, resulting in total net costs of EUR 23 million for the judiciary. This implies that the filter model can result in a potential annual saving of EUR 47 million, departing from the assumptions about the effectiveness of the filter model. This boils down to a reduction of the net costs by well over 60%. It follows from a comparison between both tables that the total costs of all flows also decrease, which indicates that the filter model can, in addition to a cost saving for the judiciary, also result in an actual gain over all files and that a shift of costs from the court to other parties is out of the question.

AS IS 2010: costs of dispute resolution						
flow		number	costs per case	total cost price	court registry charges	proceeds
Judiciary						
sub-district	non-appearance	454,737	€63	€28,648,413	€130	€59,115,772
	defence	168,190	€771	€129,674,714	€550	€92,504,660
civil	non-appearance	15,230	€199	€3,030,832	€575	€8,757,428
	defence	25,933	€4,050	€105,032,581	€1,350	€35,009,132
Arbitration						
Court of Arbitration for the Building Industry in the Netherlands		1,305	€7,000	€9,135,000		
Netherlands Arbitration Institute		33	€7,000	€231,000		
Mediation						
Referred by Legal Aid and Advice Centre		2,345	€720	€1,688,400		
Referred by the judiciary		4,311	€720	€3,103,920		
<i>(of which commercial cases)</i>		497	€720	€357,840		
total costs				€280,544,859		
total costs judiciary				€266,386,539		
estimated net costs judiciary AS IS				€70,999,547		

Table 3: estimate of the cost structure for the judiciary in collection cases in the AS IS situation

Changes compared to the AS IS situation		
Increase in the number of mediation cases	5%	Percentage of the defended cases in the TO situation to mediation (sub-district and civil)
Cost price non-appearance cases sub-district	€40	Strong efficiency gain by replacement of manual handling
Cost price non-appearance cases civil	€130	Efficiency gain is parallel
Cost price defence sub-district	€578	Strong efficiency gain available through replacement of manual handling
Cost price defence civil	€4,050	Remains the same because the parties are already professional and efficient
Reduction of the arbitration cases that do not first pass the judiciary	0%	Percentage of the arbitration cases that are referred by the court in the AS IS situation
Increase in the number of arbitration cases	0	Based on expertise
Increase in the number of arbitration cases	doubling	Based on duration and costs
Cost price of alternative forms of dispute resolution	€1,050	Cost price of new arbitration based on costs for similar existing forms of arbitration
Reduction of mediation cases that do not first pass the judiciary	43%	Percentage of the mediation cases that are sub-district cases

It is of utmost importance that it is noted that this estimate of the benefits of the filter model are based on the limited set of data available in respect of the cost structure of the judiciary, namely the *Jaarrapportage 2010* and *Rechtspleging civiel en bestuur 2010*. The benefits follow from reasonable assumptions based on the professional insight of the Supervision Working Group. It is recommended to conduct a more thorough study on the extent to which the processes within the judiciary can take advantage from the filter model. This kind of study results in a detailed insight into and an accurate picture of the possible saving on costs.

TO BE: costs of dispute resolution						
flow		number	costs per case	total cost price	court registry charges	proceeds
Judiciary						
sub-district	non-appearance	454,737	€ 40	€18,189,468	€130	€59,115,772
	defence	159,781	€ 578	€92,393,233	€550	€87,879,427
civil	non-appearance	15,230	€ 130	€1,979,940	€575	€8,757,428
	defence	24,636	€ 4,050	€99,780,952	€1,350	€33,258,675
Arbitration						
Court of Arbitration for the Building Industry in the Netherlands		1,305	€7,000	€9,135,000		
Netherlands Arbitration Institute		33	€7,000	€231,000		
Other forms of arbitration		1,338	€1,050	€1,404,900		



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Mediation					
Referred by Legal Aid and Advice Centre	2,345	€720	€1,688,400		
Referred by the judiciary <i>(family law and administrative law)</i>	<i>3,814</i>	€720	€2,746,080		
Referred by bailiff <i>(commercial cases)</i>	<i>10,203</i>	€720	€7,346,267		
total costs TO BE			€234,895,241		
total costs judiciary TO BE			€212,343,594		
estimated net costs judiciary TO BE			€23,332,292		
estimated net costs judiciary AS IS			€70,999,547		
Estimate saving on net costs TO BE			€47,667,255		

Table 5: estimate of the cost structure for the judiciary in collection cases in the TO BE situation

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7. Appendices

7.1 KBvG and innovation: the filter model in collection cases

On 31 October 2011 Minister Opstelten (Security and Justice) sent his innovation agency for the legal system to the Lower House. In his explanatory notes to the Innovation Agency Minister Opstelten writes that the system of dispute resolution must be up to date and must anticipate changing wishes and needs of society. In this respect the Royal Dutch Organisation of Bailiffs (KBvG) informs you of a specific innovation that is perfectly in line with this: the filter model for collection cases.

In the current situation it is still true that if a collection matter cannot be solved amicably that in many instances the case ends up in court. On the basis of the served and submitted writ of summons the court registry prepares the case, a public hearing takes place and the court delivers judgment. This course of proceedings implies that a large number of acts needs to be carried out before the interested party obtains a title with which the claim can be recovered.

Recently many non-appearance cases

It follows from the following figures of the Council for the Judiciary that in a considerable number of these collection cases defence is not put forward and a judgment is delivered by default of appearance.

	Writs of summons	Non-appearance percentage
Sub-district commercial cases		
2007	487,625	71%
2008	555,763	73%
2009	602,633	75%
Civil cases		
2007	34,236	35%
2008	36,505	35%
2009	40,802	40%

The figures indicate that the court and the court registry unnecessarily dedicate a lot of time and money to a judgment by default of appearance.

Innovation: filter non-appearance and defended cases at the earliest stage possible!



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That is why the KBvG deems it to be appropriate and efficient to at the earliest stage possible make a distinction between collection cases that can be handled through non-appearance and collection cases where defence is put forward and where settlement of the dispute must therefore be provided by the court. This distinction ensures that the court is only relied on as a dispute settler when the court registry is familiar with the fact that the respondent disputes the claim. If defence is not put forward then the acquisition of a title with which the claim can be recovered can strongly be simplified. Thus the court and the court registry can better dedicate their time to claims where there is question of a difference of opinion.

The challenge in this respect is to be able to make a clear distinction between an ‘undisputed financial claim’ and a substantive dispute. With the filter model this can be done fast and in a reliable manner for collection cases.

An outline of the filter model

- The filter model can briefly be outlined as follows:
- The proposed new procedure starts with the service of the legal claim (writ of summons) by the bailiff under the authority of the creditor. The respondent can inform the bailiff in writing within a specific time limit that he disputes the claim.
- After the service of the legal claim there are three options:
 - 1) The claim is paid
 - 2) The respondent remains silent
 - 3) The debtor informs the bailiff that he intends to put forward a defence
- If after the service of the legal claim payment fails to materialise then the court is involved. This can be done as proposed by the bill for the Dutch Writ of Summons (Electronic Submission) Act and is fully in line with the comments of Minister Opstelten in his Innovation Agenda about digital accessibility of the judiciary.

As a result of this electronic submission all collection cases are submitted to one point. This makes it possible to create a clear distinction between cases where the debtor indicated to put forward a defence and cases where this is not the case or where the claim is acknowledged. Finally it is possible to – following on from the above – expand the referral function of the bailiff. This would be possible by not only presenting the choice for defence or non-appearance to the respondent but also the use of alternative methods of proceedings, as also announced in the Innovation Agenda. For instance a respondent – stating an email address – can opt for the electronic proceedings before the sub-district court.

7.2 Most frequently occurring errors in the supplied draft writ of summons

<i>date</i>
in numbers, mostly the year
<i>at the request of</i>
failure to state the first names of the claimant
failure to state the residence of the claimant
election of domicile at PO Box
failure to elect or appoint lawyer (in case of appeal in cassation)
<i>summon</i>
provision of out-dated address details
writ of summons addressed to PO Box
cross-border service insufficiently known or applied
only general partnership summoned and not the partners
if public or abroad, often served on the wrong Public Prosecution Service
<i>to on</i>
elected day or time of the hearing not in accordance with rechtspraak.nl
manner of appearance incorrect or not recorded at all
incorrect address details of the judicial authority
summoned to appear before the wrong court (mostly territorial jurisdiction)
incorrect amounts for the court registry charges
notice multiple respondents / similar statements often missing
following on from the above: notices of objection are sent when this should be notices of appeal
<i>claim</i>
unnecessary claims (procedural costs and strong arm of the law in case of evictions)
no costs claimed for prejudgment attachment

Table 6: Most frequently occurring errors in the documents supplied to the bailiff



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7.3 Process models AS IS

[...]

7.4 Process models TO BE

[...]