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Changing roles of Legal: On the Impact of Innovations on the Role of Legal Professionals and Legal Departments in Contracting Practice

By Ivar Timmer*

Abstract

Legal departments play a pivotal role in the quality of contracts and contracting processes within an organization. This article reflects on current developments and innovations in contracting practice and their impact on the role of legal professionals and legal departments within organizations. Based on empirical research among legal professionals and legal departments in Dutch legal practice, the article positions contracts and contracting within the legal function of an organization and discusses developments in contract management, automated contract assembly and legal design and their potential impact on the role of legal professionals and legal departments. Finally, areas for future research are identified. Throughout the article, the focus is on large commercial organizations.

Introduction

Legal departments and legal professionals play an important role in contracting processes within organizations. Legal practice is changing under the influence of, among other developments, increasingly demanding clients and digitalization. In a recent book on the future of knowledge-intensive professions, Daniel and Richard Susskind (Susskind &

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Susskind, 2016) introduced the concept of two futures. In the first future, technological innovation will streamline and optimize parts of the work of professionals, without radically changing normal practice. Thereafter, in a second wave of innovation, technology will change the way professional services are delivered in a more fundamental way. This “first and second future” will develop in parallel for a certain period, after which the second will dominate. With regard to contracts, if time should prove this metaphor true, the second future may be looming in the form of smart contracts, written entirely in computer code and using block chain technology, as currently emerging in some specific sectorsⁱ. In the contracting practice of large commercial organizations, software for contract life cycle management (CLM) and contract assembly are currently shaping the first future. Organizations still vary greatly in speed and scale of implementation of these types of software applications (cf. NEVI and MITOPICS, 2014 and Exari, 2015), but it seems inevitable that their use will increase.

Although there will be differences across sectors, as a rule of thumb the average legal department in a large commercial organization will spend more or less half its time on contracts and contract-related subjects, which is therefore one of the most relevant areas for innovation. In many European and US organizations that have a separate contract management function, this function reports directly to the legal department (IACCM, 2016:5). Surveys indicate that many general counsel consider the state of the contracting processes in their organization as suboptimal (cf. Exari, 2015), which concurs with the findings in this study. Further digitalization and automation of contracting processes may be part of the solution for the “more for less” challenge that legal departments face: the demand to serve business better and faster, at the same or lower costs.

Many legal contracting professionals and scholars advocate that a good contract should be a “blueprint for performance” (DiMatteo, Siedel and Haapio, 2012), rather than just a “legal weapon”ⁱⁱ, which comes into play only when things go wrong. In many organizations, contracts do not yet perform this role of “business enabler”. Because automating contracting processes requires redesigning existing procedures, it is an opportunity to involve all stakeholders in shaping lean and user-centered contracting processes. Legal departments and legal professionals wishing to take an active role in redesigning and managing these processes have to possess more than just legal knowledge and skills. This article discusses (digital) developments and innovations in legal practice with regard to contracting and reflects on their potential impact on the role and required knowledge and skills of legal departments and legal professionals.

Methodology and Structure

This article is the result of an explorative study of developments and changes in the area of contracts and contracting in Dutch legal practice and their impact on legal professions. The primary objective of this study is to identify trends and good practices that could contribute to more effective management of processes of contract drafting and contract life cycle management (hereafter: contracting processes) within organizations and thus to better management of the legal function, as well as to identify areas for future research. Legal educators may use the results to anticipate new developments and attune legal education to changing legal practice.

The study is part of a long-term research project into the structure and size of Dutch legal practiceⁱⁱⁱ. In this research project, among many other research activities, a great number of legal professionals (>200) from a wide array of organizations in Dutch legal practice were

interviewed^{iv}. In semi-structured interviews, they were asked to provide detailed information on the number of legal professionals working for their organizations, and on the tasks and responsibilities of these professionals and the knowledge and skills required for their functions. In addition, they were asked to identify and reflect on relevant internal or external developments that could change the practice of legal professionals. As an important part of many legal professions, contracts and contracting processes played an important role in many of these interviews.

Additional data for this study were gathered in three so-called “round tables” on the differentiation in functions in legal practice and the use and application of digital tools. These round tables were attended by representatives from all relevant sectors of Dutch legal practice. Finally, the data were supplemented with seven interviews on contracts and contracting with experts with backgrounds in contract management, contract assembly, legal process outsourcing or legal staffing in commercial practice. These interviews were aimed at verifying possible conclusions that emerged from the data gathered in the overarching research project. The focus in this article is on large, commercial and multinational organizations, but many conclusions will apply equally to smaller companies and public organizations.

First, the relationship between contracts, legal departments and the legal function of an organization is discussed from a theoretical perspective. After this, aspects of automating the contract drafting and contract management process will be discussed, in relation to the findings in the empirical study and illustrated by examples from Dutch legal practice. This section is followed by some reflections on the possible role of design principles and visualization in automated contract assembly, a new area of potential innovation. Finally,

conclusions are drawn on how current and future developments could impact the role of legal professionals and legal departments and challenges for legal education and areas for future research are identified.

Contracts and the Legal Function

One way to analyze an organization is to look at its different *functions*, such as its financial function or human resource function. A function in this sense is a feature of an organizational system that is *performed* by constituents of the system. From this analytical perspective, any organization, no matter its size or type of business, also has a *legal function*. The legal function consists of all legal aspects, connected to all its activities. In large, multinational organizations the legal function will be highly complex and will be performed by professionals from various departments, such as sales, procurement, human resources and finances. Specialized legal expertise and conscious efforts to optimize the legal upside and minimize the legal downside of organizational activities will be indispensable to protect the organization from legal disaster and reach organizational objectives. A long list of corporate scandals has demonstrated that there can be grave consequences for organizations that fail to adequately manage their legal function. Ultimately, general management will be responsible for the state of an organization's legal function, but it is obvious that legal departments play an important role.

The legal function consists of various aspects, such as complying with relevant rules and regulations, protecting organizational assets through optimum use of the law and legal instruments and guarding organizational ethics and integrity. In their advisory role in managing the legal function, legal departments inevitably have to mix roles of a different nature (Nelson and Nielsen, 2000: 457). They have to identify and mitigate legal risks, be the

conscience of an organization and the guardian of ethics and organizational values, as well as a business advisor and facilitator, all at the same time.

Contracts are important instruments for business success and many large organizations sign tens of thousands of contracts every year (Exari, 2015: 2)^v. Because of their role in business success and because they directly alter an organization's legal position, contracts are among the most important aspects of the legal function. Many in-house counsel consider contractual risk as the primary source of legal risk (BLP, 2013:7). Being in control over contracting processes is therefore an important precondition for effective legal risk management and legal departments should strive to optimize contracting processes in close collaboration with all stakeholders.

Traditionally, legal departments have focused more on the content of contracts and technical legal aspects, such as limitations of liability, indemnifications or forum selection, than on contracting processes. However, legal practice is slowly but steadily changing under the influence of digitalization. *Legal tech* has turned into a trending topic within the legal community, with software applications for contract management, corporate housekeeping and contract drafting as some of the most prominent topics of discussion. In a natural way, this is directing the attention of legal professionals to the way contracting processes are organized.

CLM Software and the Role of Legal Departments

CLM means different things in different organizations. There are relevant differences between organizations that produce goods and organizations that deliver services, as well as differences between organizations that have large numbers of suppliers or buyers, or relatively small numbers. These differences will impact the way (pre- and post-award)

contract management should be organized optimally, but fall beyond the scope of this article. In all instances, CLM will be important to maintain good relations with suppliers and buyers and be a relevant factor in commercial success.

Until recently, CLM was a manual and paper process. Paper contracts still play a role in many organizations. Various respondents in this study, involved in the CLM process, have stated that it is not uncommon for business managers to insist on paper contracts, because they somehow feel that paper is more reliable, or because of a false notion that a digital version would not be valid in audits. The respondents experienced that this fixation on paper documents has a negative effect on contract accessibility and complicates, among other things, version control, change management and searchability of contracts (cf. Apptus, 2015: 2). Some industries, such as the construction industry, appear to be particularly conservative, while other sectors are more progressive by nature. It seems likely that the ever-increasing digitalization of society, as well as the increased use of electronic signatures, will eventually bring change, even in the most conservative corporate cultures. New EU-regulations that will further harmonize regulations on digital signatures throughout the EU will provide an extra impulse.

Of course, even the most conservative organizations are currently using digital tools in some stage of their contract management process; at the very least basic spread sheets in Excel. In fact, several surveys show that most large commercial organizations have now acquired some form of CLM software (cf. Exari, 2015), which concurs with the findings of this study. Experts who were interviewed stated that the last five years have seen an acceleration in the way large Dutch commercial organizations adopt specialized contract management software, with the aim of improving grip on contracting processes. This type of software is

sometimes combined with software for e-signatures or secure electronic communication, such as DocuSign, eSignlive or RPost. In many cases, the adoption of new software has been instigated or led by the legal department. Optimizing contract management is a recurring theme in Dutch corporate counsel networks and conferences^{vi}. A commercial manager of one of the leading software providers indicated that they expect the Dutch market for contract management software for large organizations to saturate in the next few years. This will create an impulse for software providers to innovate their products and services, as well as find new markets, such as small and medium-sized enterprises.

There are numerous CLM software providers. Some providers offer CLM software alongside more general enterprise software applications, such as SAP, while others are more specialized and have legal departments as customers. In the latter category, a considerable number of Dutch large commercial organizations use the software of Effacts, a Netherlands-based provider, recently acquired by the large Dutch publishing firm Wolters Kluwer.

MochaDocs is another Dutch provider that has some large organizations as customers.

However, with many multinationals having their European headquarters in the Netherlands and “bringing their own”, there is a great variety of software being used by organizations in the Netherlands. Some multinationals also use service providers such as Axiom or Pangea3 and have outsourced part of their contract management process, although this practice is still relatively rare.

Although the number of organizations that have acquired CLM software is thus growing, successful implementation remains difficult. CLM is by nature an interdisciplinary process, with multiple internal stakeholders, such as the operations, finance, sales or procurement, marketing and legal departments. To effectively redesign and implement new contract

management processes implies involving all these stakeholders and often changing the habits of, possibly, hundreds or thousands of organizational constituents. Currently, many legal departments experience how difficult this is (cf. Exari, 2015: 1). Respondents in this study explained that legal departments that want to take the lead in CLM software usually start off with good intentions, but soon run into problems, sometimes because of insufficient preparation and preliminary analysis, or because it is unclear who is responsible for the implementation of new processes. The interdisciplinary nature of the contract management process often complicates a clear allocation of responsibility. The interviewed experts indicated that in most organizations the business is responsible, but that it is often unclear where the responsibility of the business ends and that of the legal department starts (cf. Apptus, 2015: 4). The best solution to a given situation will depend on the organizational context and factors such as the type of business, the organizational structure and the size and position of the legal department.

Because of the difficulties mentioned above, adoption of CLM software is often suboptimal and organizations will, for example, struggle to switch to one contract management system for all departments (cf. NEVI and MITOPICS, 2014: 3), while it is clear that using multiple systems that are not linked presents risks, increasing the likelihood of mistakes and inefficiencies. The interviewed experts view the tendency of legal professionals to pay more attention to their substantive legal work as a complicating factor in successful adoption and recommend that legal departments pay more attention to process management and communication. Of course, this does not mean that all legal counsel should turn into managerial and communicational superheroes. Key is that the legal department as a whole, from legal managers to specialized legal counsel and paralegals, is capable of performing its

role in the contract management process and has the ability to collaborate effectively with other departments.

No matter how complex implementing contract management software is, the potential benefits for organizations that succeed are great. First, an up-to-date contract database provides accurate information on the impact of contingencies, for example in cases where suppliers experience financial problems or suffer from natural disasters, endangering the operations of a company. Second, based on surveys among its members, the International Association for Commercial and Contract Management (IACCM) estimates that the average loss for organizations due to poor contract management is close to 10%^{vii}. Although part of these losses will be unavoidable, this indicates that, potentially, there is a lot to be gained. From the perspective of legal quality, the ability to monitor and digitally analyze contracts, contracting processes and claims offers the possibility to continuously improve and better serve business needs. For example, finding out in how many contracts the organizations deviate from standard clauses is a tedious task when contracts are not easily accessible, which would change if content is digitally accessible. The decision on whether standard clauses should be updated could then be taken on an informed basis. In possible mergers or acquisitions, where virtual data rooms have to be set up, the contract database acts as a permanent data room, saving valuable time. It is interesting to speculate further what role *contract data mining* could play in the future. Some call *Legal Big Data* a new, empirical revolution for the legal profession (see Leeuw, 2015). The further development of data mining techniques can also be expected to change legal practice within organizations, as the ability to analyze data that provides feedback on the state of the legal function increases exponentially. Proactive legal counsel can use these techniques to improve contracting processes throughout the organization (Lopez, 2016).

Automating Contract Assembly

All large organizations have templates for contracts, sometimes stored in a central repository that is maintained by the legal department and sometimes linked to CLM software in use. However, both respondents from organizations as well as the interviewed experts have confirmed that, in many organizations, there is no or suboptimal systematic and structured maintenance of contract templates. Outdated or inadequate contract templates, especially when used by persons without specialized legal expertise, such as sales professionals, are a source of legal risk. The use of contract automation software (or, equally, “automated contract assembly software” or “document assembly applications”) can mitigate these types of risks and improve the overall quality of the contracts being used.

To give an overview of the market for contract assembly applications, in many countries commercial websites offer contract templates, based on national law, that enable small and medium-sized enterprises to create basic contracts, usually without assistance by legal professionals. A US example is legalzoom.com, while a Dutch equivalent is overeenkomsten.nl, which is connected to a network of public notaries and lawyers, offering additional services when needed. For professional practice, there are legal publishers that offer digital contract templates for use by legal professionals. An example from Dutch legal practice is Smartdox, by Wolters Kluwer, currently offering contract templates for mergers and acquisitions, distribution agreements and intellectual property. However, large commercial organizations will want templates that are specifically designed for their own practice and offer more possibilities than a standard template in Word, such as the option to easily insert clauses from a clause library. They will, therefore, want to have the digital tools that enable them to create their own contract templates and structures. A

range of providers offer solutions for this need. Some providers offer general decision-making tree software that can also be used for contracts, such as US based Neota Logic, or the Dutch provider Berkeley Bridge. Other software is designed more specifically for creating documents, such as US-based HotDocs and Exari DocGen, or designed even more specifically for creating contracts, such as Thomson Reuter's ContractExpress or Netherlands based WeAgree. This type of software increasingly also moves towards the offering of contract content, partly because through the use of their software they have access to an ever-increasing amount of high quality contract elements. Because they regularly also fulfill advisory roles with regards to contract content, the boundaries between software providers, legal service providers and legal publishers are disappearing.

Software for creating or assembling bespoke contracts through the use of questionnaires and decision-making trees is still less wide-spread than contract management software (ILTA, 2013), but interest is growing. Because, as mentioned above, the average legal department will spend about half of its time on contracts and contract-related subjects, contract creation is an area where automation could potentially save much time and improve quality. Such software could substantially reduce the contract creation work of specialized legal counsel, because drafting a contract simply goes faster, or because parts of it can be delegated to other professionals within the legal department, such as paralegals. There can be more savings when the process of questioning what needs to be addressed in a contract can be delegated entirely to the business, only involving the legal department when the questionnaire indicates that there is a non-standard situation.

Automated contract drafting does not differ fundamentally from current drafting practices.

As mentioned above, all legal departments will use templates and model contracts and

combine these with simple cut-and-paste techniques to tailor a contract (cf. Apptus, 2015: 1). However, doing this “manually” in Word or other word processing software is far from optimal. Adams (2009) observes:

“Contract drafting is essentially an exercise in regurgitation. Add to that the specialized nature of contract language—it’s akin to a cross between regular writing and computer code—and it’s not surprising that business contracts are riddled with redundancies, archaisms, misconceptions, and other drafting glitches.”

Experts have confirmed that, in many organizations, the general quality of the available model contracts is often substandard and there will be routine practices that have a negative impact on quality or speed. For example, cut-and-paste contracts often contain superfluous clauses. Legal counsel might leave in clauses that do not really fit the context, “just to be sure” or simply because they do not pay attention. Such superfluous clauses create “noise” in the negotiation process, sometimes with a negative effect on relations and negotiations. As IBM found out when it shortened its cloud service contract to a two-page document, shorter contracts mean reduced negotiation times^{viii}. When executed intelligently, automated contract drafting makes it easier to always send out “lean” contracts, in which every provision is to the point and relevant.

Automating the contract drafting process will increase speed and can therefore reduce the response time of the legal department. As a result, the transaction cycle (“time to signature”) shortens significantly, which can have interesting effects. As various respondents and experts have confirmed, it is not uncommon that business people, like sales managers, tend to try to avoid the legal department because of long response times and noise that may enter their negotiations. They will trust and report that general terms and conditions

cover the deals they close. In some cases they will be wrong, increasing the risk of claims and disputes. Where response time of the legal department is greatly reduced and contracts no longer contain unnecessary “noise”, this attitude can change. Business people then appreciate the legal certainty that a drafted contract offers. The contract then clarifies and supports relations and thus reduces the risk of potential conflicts or claims. One of the experts explained that in a world-leading Dutch technology giant the number of contracts passing through the legal department, via the new contract drafting system, increased almost fortyfold, mainly as a result of this phenomenon. Most of these contracts could be handled by the standard questionnaire that the legal department used, while a small percentage required more bespoke work. For the legal department this meant that routine work disappeared and was replaced by a greater volume of more bespoke work. In the process, contractual risk was reduced because the business no longer relied on general terms and conditions, improving the legal function.

Adoption Rate

Because the technology behind contract automation software has been around for quite some time and the potential benefits are great, one could ask why the adoption rate is still relatively low. The experts who were interviewed for this study have offered several explanations. First, the legal profession is, generally speaking, conservative and not naturally oriented towards technological innovation, although the heightened attention for *legal tech* is slowly changing this attitude. Legal tech pioneer Richard Susskind recently qualified the rise of legal tech as a “slow burn, that has not yet reached the tipping point”^{ix}. Second, as a very practical explanation, the average legal department is not very large and operates under high work pressure, leaving little time for innovation, even if this could have

substantial long term benefits. Yet, some innovative Dutch corporate legal departments have started using contract automation software, with WeAgree as an active provider in this part of the Dutch market.

Another factor that might explain relatively low adoption rates is that the hourly billing model of law firms, which also do a lot of work in contract creation and could have been front runners in innovation, may have acted as a natural incentive against automation. However, partly because of the economic crisis and law firm clients who are demanding “more for less”, this practice is changing. Various Dutch law firms have started to use the contract automation software of ContractExpress or Berkeley Bridge^x to improve services to their corporate clients. This often includes a set of contracts, accessible through contract assembly software, which can be used for free by the client’s legal department, as part of the general service the law firm offers. This development may be an impulse for the further spreading of contract automation software.

Just as the hourly billing model may have acted as an incentive against innovation within law firms, experts and law department managers have explained that some legal contracting professionals may resist contract automation software out of fear of being “automated out of a job”. It is true that automating the contract creation process can obliterate routine contract work and therefore reduce the work of a legal department. Nonetheless, the legal department will still have to create and update the legal content of the software application, as well as the questionnaires to generate the contracts. Furthermore, as will be explained below, other work may replace the obliterated routine work. Attrition is therefore certainly not a necessary consequence of automating contract drafting. In fact, the work of

legal professionals may even become more diverse and challenging if routine contract work is automated.

Reengineering and Automating Contract Creation

Benefits from a contract automation software application depend on the quality of the way in which the contract drafting process is reengineered. A step-by-step analytic approach, as advocated by all process management philosophies, is essential (cf. WeAgree, 2013). First, an organization should select which types of contracts can be included in the contract automation application. Eligible are all contracts that are negotiated on a regular basis by the organization's business lines or departments. These could include sales-side contracts (i.e. sales agreements, service contracts or licenses), purchase-side contracts (i.e. purchasing contracts, warehousing, transportation, waste treatment and large procurement contracts), contracts related to intellectual property (including confidentiality agreements) and M&A- and financing-related documents and possibly also contracts related to corporate housekeeping (e.g. resolutions, powers of attorney and corporate guarantees) (WeAgree, 2013).

After this selection assessment, an expert group, representing all stakeholders, could be formed to prepare the upgrade and automation of the contracts. In this phase, all existing templates or model contracts should be stripped to the basic building blocks or clauses of which they are composed. This offers a unique opportunity to discuss essential business needs and legal elements that the contract needs to cover and to analyze the impact of distinct contract elements for internal stakeholders: what ends up on the to-do-list for department W or X when contract element Y or Z is inserted? This exercise will also reveal historic inefficiencies that have grown into the contracting processes, as well as possible

differences in drafting styles for different type of contracts. If there is no good reason for these differences, new drafting conventions could be agreed, such as consistently using present, active tense and avoiding legalese as much as possible. After this step, several rounds of composing new building blocks and fine tuning by legal contracting experts may be necessary. One of the experts, working for a provider of decision-tree making software, explained that this step, performed by meticulous legal professionals who have to do this in addition to their regular duties, is often very time-consuming and should therefore not be planned optimistically.

Of course, not every stakeholder has to be represented at every step of this process, but all have to be involved, also to decide on matters such as layout and house style. Finally, the building blocks of the contracts and the questionnaire that leads to them can be programmed and tested. As a rule, many building blocks can be re-used, while possibly some new ones may have to be made. As mentioned above, in the context of contract automation, many software providers also offer possible building blocks as a complementary service^{xi}.

After the upgrading and building phase, implementation can start, followed by monitoring and sustaining improvements. If the questionnaires to generate the contracts are well-designed, no extensive training programs should be necessary, although some explanations and “internal awareness roadshows” may be indispensable, especially when professionals outside the legal department will use the software. The possibility of different authorization levels in the software makes it possible to delegate tasks, depending on knowledge, skills and context of use. As an example, in a large Dutch research institute, professionals from the research and development support department now have the opportunity to draft all

possible kinds of contracts. As mentioned above, within the legal department there can also be a differentiation in tasks. Paralegals or professional support lawyers may use the application to generate different types of routine contracts, while specialized legal counsel can take over when the questionnaire indicates bespoke work is needed on certain aspects. A lot of this bespoke work can also be done within the application, using a clause library to insert clauses that fit specific, non-standard situations.

Most contract assembly software is still used primarily in situations where one of the parties has access to the questionnaire and dictates most of the terms. However, technically it is not difficult to enable more collaboration, resembling other collaborative digital environments, by granting the other party access to the application and working together to assemble or draft the contract, or through linking it to negotiation software. There is some research that suggests that these type of digital collaborative environments can enhance creativity (cf. Karakay and Demirkan, 2015), potentially changing the dynamics of contract negotiations and contract drafting.

Visualization and Automation

Another interesting development in the world of contracts is the use of visualizations that elicit complex elements or clauses to support usability of the contract (Berger-Walliser, Bird, Haapio, 2011). Many respondents have confirmed that, in their organization, contracts are perceived as difficult to read and not user-friendly, sometimes because of the sheer length of the contract or excessive use of “legalese”. Visualizing contracts can enhance the comprehensibility and usability of a contract (Passera, 2015). Some subjects that occur frequently in contracts, such as complex timelines involving several notices and deadlines

are more easily explained visually than in text only. Combining text and images can have an added value and also be useful as a practical explanatory tool to facilitate negotiations.

Using visualizations in contracts can be seen as a legal design tool or technique. The term *legal design* is used here to encompass the (re)designing of legal processes, procedures and services with a central focus on end users and user-friendliness^{xii}. Applying design principles can make digitalized contracting process lean and user-centered. The possibility of combining automation and visualization offers interesting possibilities in this respect.

Passera, Haapio and Curtotti (2014), describe experiments with digitally generated visualizations of contract clauses. They provide proof-of-concept demonstration tools that could help contract drafters to present content in a more reader-friendly way.

Generally, in a business context, combining visualization and automation has the potential to raise standards of internal customer satisfaction with the services the legal department offers. Currently, visualization does not play a large role in contracting practices, other than in the preparatory stages. Every contracting professional will sometimes use visualizations (in the form of diagrams, mind maps or flowcharts) when analyzing or structuring a deal, but respondents in this study did not report that they already use any visualizations in contracts on a large scale, although some mentioned using simple diagrams or flowcharts. However, interest in the usability and readability of documents produced by legal professionals appears to be growing in Dutch practice. This is illustrated by the recent hire by two large Dutch law firms of graphic designers, as well as the fact that in 2016 there have been several meetings and workshops in the Netherlands on legal design and the use of infographics by legal professionals, including one attended by representatives of some of the largest Dutch law firms. Furthermore, there has recently been a large-scale initiative in the business-to-

consumer practice. In 2014, the Dutch Association of Insurers issued “the insurance card”: a standardized way for all Dutch insurers to provide information to consumers about the coverage that their insurance offers, using standard icons. After the first two insurance types in 2014, for disability insurance and fire and theft insurance, 16 other types followed in 2016. The pictures below are taken from an insurance card for legal expenses insurance. In the light of these developments, it is not unlikely that the use of visualizations will grow in the future. Legal departments that manage to effectively use design principles and visualizations to improve their services may possibly raise the poor scores of contracts on user-friendliness.



Figure 1: example of the standard icons used on an insurance card for legal expenses, see <https://www.verzekeringskaarten.nl/das/DAS-voor-Particulieren>

Conclusions

Traditionally, legal practice has never been very innovative or a front-runner when it comes to digitalization. However, a change has set in and, owing to the ongoing digital developments, it is not likely to stop anytime soon. In Dutch legal practice, especially in

large organizations, CLM is on the brink of being digitalized completely. Although there are still a lot of challenges and few organizations have fully mastered the process, it is fair to assume that integrating or linking contract management and enterprise resource management software will be standard practice in large organizations in the near future. Executed well, this could raise internal customer satisfaction, while improving the overall state of the legal function of organizations, through helping legal departments to better fulfil their role in monitoring and managing the risks that organizations face.

Contract automation software is still less wide-spread than contract management software, but in Dutch legal practice the first large organizations and law firms have started to integrate this into their operations. The first results appear promising. Given the increasingly digitalizing world that we live in, there is no good reason why these developments would not continue. Resistance by legal contracting professionals may slow down the adoption rate of this type of applications, but ultimately they will not be able to prevent this trend. Hence, routine legal contracting work is likely to be replaced more and more by contract assembly software, which will also facilitate delegating more contracting work to non-legal professionals in other organizational departments. Design principles can help organizations in redesigning contracting processes in efficient and user-friendly ways, while eliminating historic inefficiencies, thus optimizing performance.

Although there can be great benefits, these developments will also present new risks. With more and more legal processes digitalized, quality control and supervision will become more important. Although there will always be a need for case-specific legal work and bespoke legal advice, the role of legal departments in large organizations is expected to shift towards legal process management and quality control. This analysis was shared by a great majority

of the respondents from large commercial organizations in this study and ties in with a recent debate in the legal community on whether technological innovations will require legal professionals, in general, to become more “T-shaped”. In this debate, sparked by an article in the Law practice magazine of the American Bar Association (Amani Smathers, 2014), the vertical stroke of the “T” represents specialized legal knowledge and skills, while the horizontal stroke of the T represents a breadth of other knowledge and skills in fields such as technology, project management or business, enabling legal professionals to collaborate more effectively with other disciplines. At the 2016 annual meeting of Dutch law schools, there appeared to be general consensus that traditional legal education should pay more attention to some of these non-legal skills and knowledge.

The main conclusion of this study is thus that digital developments and innovations following from design thinking will change legal contracting practice and the role of legal professionals and legal departments, which justifies more attention to these developments in legal research, as well as legal education. Currently, there is a relative dearth of academic legal research on this subject. Most empirical research into these developments is being done by commercial parties, which do not always have the same critical approach and quality standards as academic research.

There are many relevant questions to be asked. Although there are obvious benefits to digitalizing contracting processes, it will also bring new risks and possibly unintended and undesirable side effects. Some possible research questions include: Does automated and professionalized contract management lead to less or different claims against organizations? What are effective ways to monitor contract quality, when the possibilities to digitally analyze information on contracts increases exponentially? Does automated contract

assembly, and the extent to which the contract assembly software or other software applications allows for collaboration, change contracting dynamics between parties and lead to different contracts? Does an automated process weaken or strengthen the position of either of the parties involved? To what extent is it possible to delegate contracting work to non-legal professionals through contract assembly software, while maintaining high standards of legal risk management? What role can legal design play in increasing the usability of contract assembly software? To what extent will contract management and contract assembly software influence the head count in legal departments? What is the ideal content of the “T” for legal contracting professionals? The answers to these and other questions will provide professionals with objective information to make better choices in the changing reality of contracting practice.

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Notes

ⁱ See e.g. <https://medium.com/@ConsenSys/what-if-we-developed-legal-contracts-like-we-developed-software-applications-1b5bc8fbb915#.afnk80eld>

ⁱⁱ The IACCM has introduced this metaphor of contracts evolving from “legal weapons” to “economic assets”, see e.g. <https://www2.iaccm.com/resources/?id=9182&cb=1462808671>.

ⁱⁱⁱ One of the objectives of this research project, which started in 2010, is to chart Dutch legal practice, which has led to a digital atlas with information on more than 1500 organizations in Dutch legal practice, see www.atlasrechtspraktijk.nl. The atlas is supported by 11 universities of applied sciences that use the websites as an educational tool in helping students prepare for work in legal practice. It has been developed in cooperation with Sdu Publishers (www.sdu.nl).

^{iv} In the context of the research project, job advertisements for positions in Dutch legal practice are continuously being monitored and analyzed for trends and developments. Other activities include two extensive studies of the job market for social legal professionals (2014), as well as for paralegals (2014), see www.hva.nl/legalmanagement for more information.

^v In this survey, 92 Corporate Counsel and compliance professionals were asked about their habits and challenges surrounding contract creation, storage and legal technology. 32% of the organizations signed more than 10.000 contracts each year.

^{vi} See for example <http://www.effacts.com/en/blog/legaltech-amsterdam-2015-presentation-overview>

^{vii} See the whitepaper “The 10 Critical Pitfalls in Modern Contract Management” from Open Windows Software and IACCM via <http://openwindows.com.au/white-papers/>, page 3

^{viii} See IBM Press release: IBM radically simplifies cloud computing contracts, Dec. 18, 2014. Available at: <https://www-03.ibm.com/press/us/en/pressrelease/45737.wss> [Accessed Feb. 15, 2015] and Sue Reisinger, How IBM shrunk a complex contract down to 2 Pages, April 30 2015, available at: <https://www2.iaccm.com/resources/?id=8527&cb=1449132663&> [Accessed Feb. 15, 2015] For this project, IBM won the 2014 innovation award from the International Association for Commercial Contract Management.

^{ix} See <http://britishlegalitforum.com/legal-it-innovation-slow-burn-not-tipping-point-says-susskind/>

^x The results of this study show that one of the large international players, HotDocs, is absent in the Dutch market.

^{xi} For example, WeAgree, like other suppliers, regularly publishes free model contracts, see <http://weagree.com/content/71-free-e-books-and-model-contracts.html>.

^{xii} See www.legaltechdesign.com and www.legaldesignjam.com for an impression of some work in the field of legal design.

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