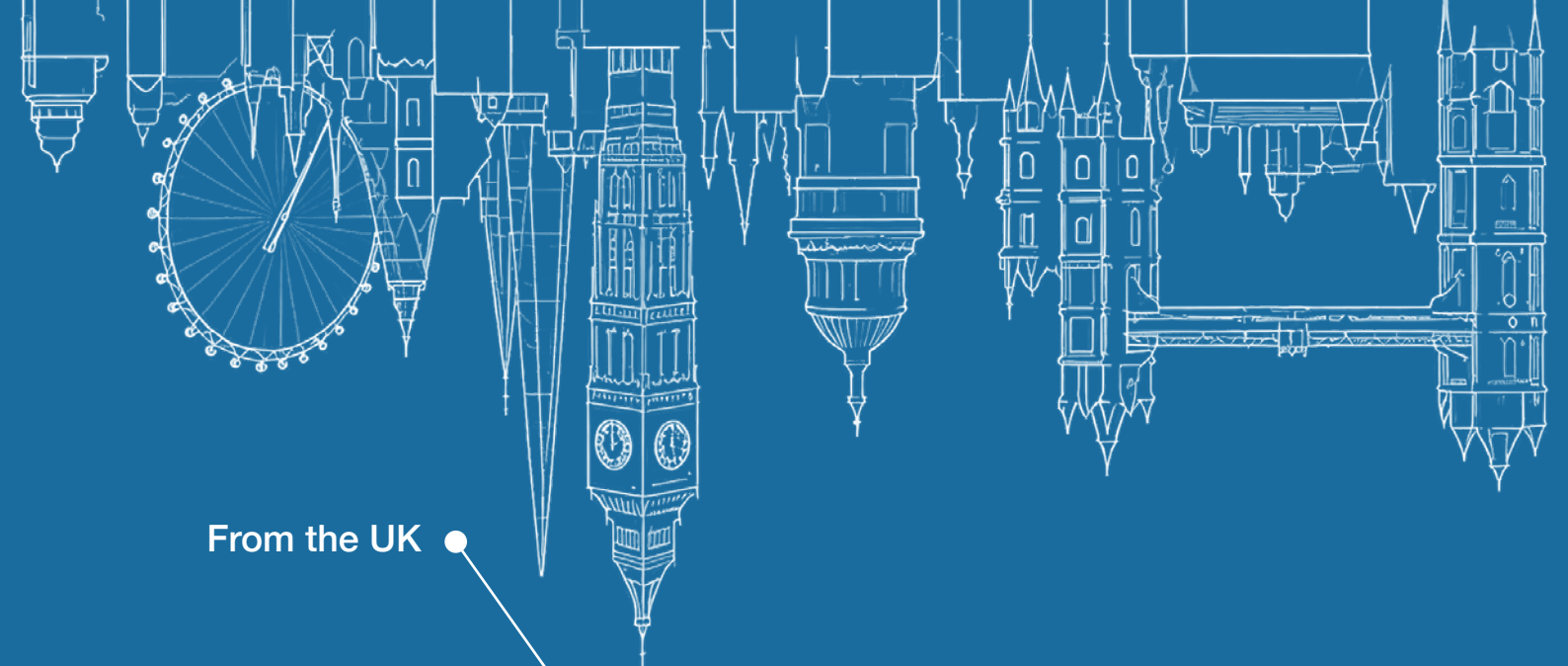




From the UK ●

Mind the gap

holla
legal & tax

In a world without borders,
legal differences can have
major consequences for
your business.

Holla legal & tax helps you bridge these
differences. With in-depth expertise and
international experience, we ensure that you
can do business with confidence, in both the
UK and the Netherlands.

● To the Netherlands



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Executive summary

Top reasons why UK companies choose the Netherlands

Mind the gap: why legal precision is important when expanding to the Netherlands

You're used to spotting opportunities and looking beyond borders and now you're thinking about expanding your business to the Netherlands.

Rightly so. The Netherlands can offer you a powerful platform for European growth: direct access to the EU single market, a stable and innovation-driven economy, favourable tax structures and world-class infrastructure. It's no surprise that so many UK businesses have chosen the Netherlands as their post-Brexit base, where they can maintain their operational resilience and presence in the EU market.

But opportunity alone isn't enough. The real challenge lies in bridging the legal and regulatory gap between the UK and the Netherlands. While the Dutch system offers significant advantages, it also differs fundamentally from English law and that's where costly assumptions can be made.

From the use of a STAK structure (a Dutch legal entity used to split the legal ownership of company shares from their economic benefits) and participation exemptions to director liability, employment law and governance norms, the Dutch legal landscape requires a different lens; assumptions based on UK practice can lead to costly missteps. Setting up a BV (a Dutch private limited company), drafting shareholder agreements, or navigating cross-border tax implications all demand local expertise.

At Holla legal & tax, we speak your language both literally and figuratively and help you to mind and bridge the gaps that exist between the UK and the Netherlands. With integrated legal and tax counsel across all relevant domains, we ensure your expansion is not just strategic but also structurally sound, compliant and future-proof. Because the success of a cross-border venture depends not just on where you go, but how you get there.



Aligning IP strategy with EU market entry

For UK businesses entering the Netherlands or the wider EU market, intellectual property (IP) is more than just a legal safeguard: it protects a business's position, supports growth and helps preserve business value.

Since Brexit, the UK and EU have been operating as separate IP regimes: UK trade marks and design rights no longer provide protection in the EU, so businesses active on both sides of the Channel must consider protection in each market separately.

A UK trade mark or registered design covers the UK alone. By contrast, an EU trade mark or registered EU design provides unitary protection across all 27 Member States via a single registration; this strengthens exclusivity and enforcement while reducing the risk of conflicting third-party rights emerging in commercially-important markets. Before launching a new brand, clearance searches and ongoing monitoring help identify earlier rights and avoid costly rebranding, disputes and lost marketing investment. Timing matters for designs: EU unregistered design protection is gained automatically after first disclosure in the EU. By contrast, the UK operates its own regime, with a different scope and timing: where and when a design is first disclosed can determine which rights arise and where.

For international groups, clear IP ownership, supported by proper assignments and licences, reduces uncertainty, strengthens the group's position in transactions and enforcement and can help shield valuable rights from an operating company's financial difficulties or insolvency.

The Netherlands is also a well-established forum for IP enforcement. The Court of The Hague in particular provides for effective proceedings and rapid relief (including injunctions) in complex, cross-border disputes involving patents, EU trade marks and EU designs. This combination of specialist expertise and effective proceedings makes the Netherlands an attractive jurisdiction for IP enforcement and also a natural base for the protection of European market positions.

And so?

Before entering the Netherlands or the wider EU market, review whether your key brands, products and designs are properly protected and whether existing UK rights also need to be secured at EU level.

A coordinated UK-EU IP strategy prevents gaps that competitors could exploit at the point of market entry or scale-up. It also clarifies which group entity owns which rights; this reduces friction in financing, licensing and future transactions.

Addressing IP early will support your commercial expansion, rather than becoming a constraint further down the line.

When should you call us?

- When entering the Dutch or wider EU market, or launching a new brand, product or digital service;
- When assessing whether or not existing UK trade marks or designs also require EU protection;
- When structuring or restructuring IP ownership within an international group;
- When faced with infringement, counterfeiting or the online misuse of your IP rights.

Conclusion

A coordinated UK-EU IP strategy protects your market position and supports scalable growth. Aligning trade mark and design protection, ownership structure and enforcement strategy from the outset reduces exposure at market entry and strengthens your position as your business grows.

Although the UK GDPR and EU GDPR share the same origins, they are now operating as separate legal frameworks and are continuing to evolve independently. Because of this, policies and procedures developed for the UK market may not automatically meet Dutch or wider EU requirements.

The Netherlands applies the EU GDPR alongside its national implementation act, the *Uitvoeringswet AVG* (UAVG). It contains additional rules on areas like employment-related data processing, special category data and consent. Businesses must also bear in mind the approach of the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*), its guidance and enforcement priorities may differ from those of the UK's Information Commissioner's Office.

Currently, personal data can flow freely between the UK and the EU, as both jurisdictions recognise each other as providing an adequate level of data protection. However, businesses that rely on regular data transfers between their UK and EU operations should consider implementing contingency measures if these adequacy arrangements change in the future. This may include the implementation of alternative transfer mechanisms, e.g. Standard Contractual Clauses (SCCs) together with the UK Addendum or Binding Corporate Rules.

For employers, the differences become particularly relevant in practice. Dutch law imposes strict requirements on employee privacy and workplace monitoring. Measures like email monitoring, GPS tracking and productivity monitoring often require careful assessment and may trigger works council consultation and data protection impact assessment obligations.

Organisations should also review whether personal data can lawfully be shared between UK and Dutch group companies, whether appropriate privacy documentation is in place and whether employee and customer-facing notices meet EU and Dutch requirements.

Finally, UK businesses entering the EU market should ascertain, as soon as possible, whether they need to appoint an EU representative and which supervisory authorities may have jurisdiction over their activities.

And so?

UK businesses entering the Dutch or wider EU market should not assume that existing UK GDPR compliance is sufficient. A targeted review of data flows, HR data practices, privacy notices and monitoring policies can identify gaps before they lead to regulatory exposure. Where employees are engaged in the Netherlands, compliance with Dutch employment-related data protection requirements, including works council consultation, should be embedded in the operational and HR framework from the outset. Businesses should also assess whether an EU representative is to be appointed and whether personal data can lawfully be shared between UK and EU entities.

When should you call us?

Consider involving us when you are:

- entering the Dutch or wider EU market and processing personal data of EU residents;
- employing staff in the Netherlands and handling employee data or workplace monitoring;
- transferring personal data between the UK and the EU and assessing the legal basis for those transfers;
- facing a data breach, regulatory inquiry or compliance challenge under EU or Dutch data protection law.

Conclusion

The earlier privacy compliance is addressed as part of your European expansion strategy, the lower the risk of regulatory scrutiny, operational disruption and costly remediation measures later on.

● Intellectual Property, IT & Privacy gap no. 2

Privacy and data protection

Accidental partnership

When collaboration quietly becomes joint liability

In English law, a best efforts obligation is generally interpreted as a demanding standard. A party may be expected to take all reasonable steps to achieve a contractual objective, even where this is commercially onerous, provided insolvency is not required. Depending on the circumstances, English courts may expect a party to exhaust all reasonable courses of action and give substantial priority to the contractual objective.

Under Dutch law, the concept is materially different. A best efforts obligation is generally viewed as an obligation of conduct rather than of result. A party must act reasonably, prudently and professionally but retains the discretion to balance the contract in question against legitimate business interests. Dutch courts focus on whether a reasonably-competent professional would have acted similarly in the circumstances.

The divergence outlined above creates a common cross-border drafting trap. Language that imposes a demanding obligation under English law may create a far less onerous commitment under Dutch law. Therefore, when disputes arise, the governing law can significantly affect risk allocation, enforcement pressure and settlement dynamics.

And so?

In cross-border deals, a best efforts obligation cannot be interpreted merely as technical wording. Under English law, it can significantly restrict commercial flexibility; under Dutch law, it generally allows more room to balance contractual and business interests. Therefore, effort clauses should be drafted consciously and aligned with the governing law, deal economics and commercial realities.

When should you call us?

- When negotiating cross-border contracts governed by English or Dutch law;
- When a counterparty insists on best efforts language;
- When operational flexibility or cost control is critical.
- When a transaction involves key milestones, approvals or integrations;
- When the outcome of a dispute could depend on the scope of a best efforts obligation.

Conclusion

The term 'best efforts' may sound familiar, but its impact differs significantly between legal systems. Understanding and drafting for these differences helps parties preserve flexibility, protect deal value and avoid costly surprises when expectations are tested.



As a UK entrepreneur, you can collaborate commercially with another party or parties without automatically becoming 'partners' in a way that exposes you to each other's liabilities. You could enter into a distribution agreement, strategic alliance, co-development deal or revenue-sharing arrangement and assume that the legal risk will remain within the scope of the agreement or contract and your limited company.

In the Netherlands, the same collaboration can create an unexpected risk. Even if you never use the word 'partnership', a court or creditor may argue that your collaboration is, in substance, a legal partnership or a partnership like a *maatschap* ('professional partnership') or VOF ('general partnership'). Dutch law looks beyond labels and considers how parties actually operate. This argument becomes more likely where businesses present themselves as one commercial offering, negotiate jointly, share profits or costs, operate under a common brand, or otherwise behave like a single venture. The more integrated the collaboration, the greater the risk that a third party will argue that the relationship is more than just a contractual one.

Why is this a cliff edge? Certain Dutch partnership structures can expose participants to joint and several liability towards third parties. A supplier, customer or claimant may pursue you for the full amount of a claim, even where an operational mistake or insolvency is attributable to the party with which you are collaborating. Once this issue is raised, litigation leverage increases, settlement pressure grows and liabilities you haven't priced into the deal can suddenly affect your business.

The risks outlined above often arise during fast-moving market entry: pilot projects, joint bids, shared sales, collaborative marketing or an informal 'let's do this together' approach. Ironically, commercial success can increase legal exposure because the collaboration starts to look like one business. The solution is simple: establish a structure first and then act in line with it. Choose the right legal vehicle - or deliberately keep the parties separate - allocate roles and risks clearly, and ensure that branding, contracting, invoicing, authority and decision-making reflect the legal framework agreed. Dutch law rewards clarity and is less forgiving where commercial reality differs from the paperwork.

And so?

The reality: in the Netherlands, what you do can matter as much as what you sign. If your collaboration looks like a partnership in practice, it may be treated as one - and lead to unintended liability consequences.

What to do: structure the relationship from the outset. Select the appropriate vehicle or separation model, document risk allocation clearly and ensure your day-to-day operations align with the legal design.

When should you call us?

- When you are starting a Dutch collaboration, pilot, joint bid or revenue-sharing arrangement;
- When you plan to use shared branding, joint sales or a single face to the market;
- When the collaboration creates material third-party exposure;
- When you want a robust Dutch collaboration or JV structure;
- When a counterparty or creditor could seek to characterise the relationship as a partnership.

● Mergers & Acquisitions gap no. 2

Best efforts:
same words,
different risk

Conclusion

Collaboration can accelerate growth in the Netherlands - but it can also expand liability. The right legal structure allows you to act quickly without discovering later (at your expense) that your collaboration has become a partnership you never intended to create.

Hire fast, fire slow

UK entrepreneurs are used to flexibility. In the UK, it's possible to hire employees relatively quickly; if the employee is then found not to be a good fit, employment can often be brought to an end without major legal hurdles. This is particularly true in the first two years (note that from 1 January 2027, UK law will significantly reduce the qualifying period for unfair dismissal claims to six months). However, even then, dismissal will generally be possible if there is a 'fair reason' and a reasonable process is followed.

Enter the Netherlands and the rules change fundamentally. Dutch employment law is based on a preventive dismissal system. In most cases, employers must obtain prior approval before unilaterally terminating an employment contract. This approval is sought either from the UWV (the Dutch Employee Insurance Agency) - e.g. in the event of redundancy or long term sickness - or from the courts (for underperformance, a disrupted working relationship or culpable conduct).

Therefore, dismissal is not just a button you press; it is a process for which you prepare for. The legal grounds for dismissal are exhaustively defined by law and employers must actively investigate redeployment options within the organisation. Documentation, timing and consistent performance management are critical. What is often a straight-forward 'people decision' in the UK quickly becomes a legal trajectory in the Netherlands.

Foreign businesses frequently underestimate this distinction. Dutch employment law is not designed to maximise flexibility but to ensure continuity and protection. The underlying message is clear: hiring is a commitment. For growing businesses, this means that mistakes made at the front end - during recruitment, contract set-up or management - can have long lasting consequences.

And so?

In the Netherlands, hiring is relatively easy but letting go is not. Employment relationships require careful consideration, not correction after the fact.

When should you call us?

- When setting up your Dutch workforce or making your first hires;
- When performance falls short and you need clarity on your legal options;
- When planning a reorganisation, downsizing or closing of a Dutch entity;
- When UK-style HR practices are being rolled out in the Netherlands.

Conclusion

In the UK, you adapt quickly. In the Netherlands, you build carefully. With the right structure, you retain flexibility without getting stuck in a dismissal law gridlock.



In the UK, sickness absence is relatively contained. Employees are entitled to statutory sick pay for a limited period of time, at a capped amount. For employers, the financial exposure is predictable and usually temporary. Sickness tends to be an HR issue.

In the Netherlands, the landscape is very different. Employers are required to continue paying at least 70% of an employee's salary for up to two years in the event of illness. This obligation starts on day one and comes with extensive reintegration duties. Employers must actively support recovery and return to work, under the supervision of an occupational physician and occupational health service.

The guidance provided is not optional; it is part of a legally-regulated framework. Employers must create a reintegration plan, monitor progress, document efforts and offer suitable alternative work where possible. Failure to comply can lead to severe consequences. The UWV may impose sanctions, including an obligation to continue paying wages beyond the two-year period.

Termination due to long-term incapacity is only possible after the initial two years, provided the employer has complied with all statutory reintegration requirements. For UK entrepreneurs, this often feels like a cliff edge. Even if just one employee is off work sick in the long term, this can have a disproportionate impact on costs, operational planning and management capacity, particularly in lean teams or scale ups.

The Dutch system is rooted in social security and shared responsibility. Because of this, sickness absence is not a side issue but a structural legal and financial risk that must be managed proactively.

And so?

Illness in the Netherlands is not a temporary disruption; it is a long-term obligation. Mistakes are not just inconvenient but expensive too.

When should you call us?

- When hiring staff in the Netherlands (contracts, policies and insurance);
- As soon as an employee reports long-term sickness;
- If you are unsure about reintegration duties or UWV requirements;
- When operating with a lean HR team or international HR framework.

Conclusion

In the UK, sickness is managed. In the Netherlands, responsibility is assumed. With the right set up, risks are controllable. Without preparation, they quickly escalate into material exposure.

● **Employment Law gap no. 2**

The two-year sick pay trap



Contractor risk: higher in the Netherlands

In the Netherlands, the classification of workers as employees or self-employed contractors is under political and legal scrutiny. While UK businesses are familiar with status distinctions like *employee*, *worker* and *self-employed*, Dutch law essentially applies a binary distinction: someone is either an employee or not. The Dutch approach is fact-specific and increasingly shaped by case law. In its landmark Deliveroo judgment, the Supreme Court of the Netherlands confirmed that employment status must be assessed via a holistic approach based on all relevant circumstances.

The Supreme Court refers to 13 indicators, including the nature and duration of the work, how the work and the worker are integrated into the client's organisation and external entrepreneurship. More recently, the Uber judgment clarified that external entrepreneurship (e.g. having multiple clients, diversified turnover, investing in one's business or operating independently in the market) carries significant weight when assessing whether or not a contractor relationship exists. It may even mean that two workers doing the same type of work are classified differently: one as false self-employed and the other as an actual contractor.

The above creates opportunities for genuine contractors but increases the evidentiary burden for the businesses that rely on them, as clients must ask about any external business activities with which they would not otherwise be familiar.

At the same time, enforcement by the Dutch tax authorities resumed on 1 January 2025; this had made contractor classification a priority compliance topic for organisations.

How can organisations work towards tax compliance under the current framework?

- Obtain a clear overview of their population of self-employed contractors;
- Ensure up-to-date and tax-optimised service agreements are in place;
- Assess the sustainability of working relationships in light of the Deliveroo and Uber Supreme Court judgments;
- Implement a tax-robust contractor engagement policy and/or adequate tax control measures.
- Seek alignment with the Dutch tax authorities where uncertainty exists;
- Ensure organisational alignment with the principle that self-employed contractors operate independently.

When should you call us?

Seek advice before engaging contractors in the Netherlands because treaty law aspects in respect of tax and social security may also come into play between the UK and the Netherlands. A proactive review can reduce reclassification, wage tax and Dutch employment/pension claim risks.

Conclusion

When using self-employed contractors in the Netherlands, a more cautious approach is necessary than many UK organisations may expect. Given the absence of an intermediate worker category, the holistic framework developed in recent Supreme Court case law and renewed enforcement with effect from 1 January 2025, classification risks have increased. Therefore, organisations should ensure that contractor relationships are carefully assessed, properly documented and aligned with day-to-day practice in order to mitigate potential wage tax, social security and employment-law exposure.

Mind the gap

The Netherlands has long used a favourable tax regime to attract international talent: the so-called Dutch expat regime (formerly the 30% ruling). Under this regime, qualifying employees can receive a tax-free allowance (currently up to 30% of their wage, subject to caps and conditions) to compensate for so-called 'extraterritorial costs'. The UK does not operate a comparable payroll-based expatriate allowance. Instead, the UK tax system primarily provides relief for internationally-mobile employees via residence-based rules; for example, the temporary exemption for foreign income and gains available to qualifying new arrivals during their first four years of UK residence.

For UK businesses expanding into the Netherlands, the above has traditionally been a key tool that makes cross-border assignments financially viable. However, the regime has become much more restrictive in recent years. This makes the Dutch regime structurally different from the UK approach, as it directly reduces employer payroll costs rather than providing relief through an employee's personal tax position.

Eligibility is now subject to stricter requirements, including a higher salary threshold, a reduced maximum duration and more detailed scrutiny of whether there is genuine 'scarcity' in the Dutch labour market for the position in question. Transitional rules apply for existing beneficiaries, but new entrants face a less generous system. Importantly, the regime is also closely linked to employment tax status. Only employees are able to benefit, not self-employed contractors. This creates a strategic tension for businesses when deciding whether to engage workers as employees or independent contractors.

The expectation is that the 30% ruling will become a 27% ruling in 2027. If so, the maximum tax-free allowance will be reduced by 3 percent and higher wage thresholds will apply as well.

And so?

While the Dutch expat regime remains an important incentive, it is no longer a straightforward "plug-and-play" tax advantage. It requires careful upfront planning, wage levels, contract structure and assignment design. Small errors in setup can have significant cost consequences.

When should you call us?

You should seek advice before hiring or relocating UK staff to the Netherlands, when structuring international secondments, or when offering tax equalisation packages. Early structuring is key to ensuring eligibility and avoiding unexpected Dutch wage tax and compliance risks.

Conclusion

While the Dutch expat regime remains a valuable instrument for attracting international talent, it has become significantly less generous and more complex in recent years. For UK businesses expanding into the Netherlands, eligibility can no longer be assumed and requires the careful alignment of employment status, remuneration levels and assignment structure from the outset. Therefore, early planning is essential to secure the benefits of the regime and avoid unexpected wage tax exposure or increased assignment costs.

● HR, Employment & Personal Taxation gap no. 2

Dutch expat regime: attractive but less generous



Participation exemption and efficient profit repatriation

U Specialist | Peter van Velthoven

One key difference between the UK and Dutch corporate taxation lies in how profits from subsidiaries are taxed and repatriated within international group structures. While both jurisdictions offer forms of participation and dividend exemptions, the Dutch participation exemption is notably broad, straightforward and predictable in its application.

Under the Dutch regime, dividends and capital gains derived from qualifying shareholdings are fully exempt from Dutch corporate income tax. Importantly, this already applies at a relatively low threshold of 5% shareholding. The regime generally does not require complex tracing, minimum holding periods or extensive additional conditions, making it highly accessible and practical in day-to-day structuring.

Combined with the Netherlands' extensive tax treaty network and generally favourable approach to withholding taxes on outbound dividends (these are only subject to specific anti-abuse rules), this allows profits to be repatriated through a Dutch holding company with limited tax leakage.

From a practical perspective, the Netherlands also offers a highly efficient corporate framework: Dutch private limited companies (BVs) can be incorporated quickly, with flexible corporate governance and relatively low set-up and maintenance costs. This makes it easy to implement or adjust structures as a business grows.

As a result, the Netherlands is widely recognised as a stable and efficient hub for the holding and management of international investments.

And so?

For UK entrepreneurs, a Dutch holding company can be a clean and flexible way to structure investments, receive dividends and manage future exits - often with limited tax friction and without overly complex structuring requirements.

When should you call us?

When setting up or restructuring an international group, particularly if you are considering a holding structure, expect dividend flows or anticipate a future exit. Also if you want to build in flexibility for future investors or expansion.

Conclusion

The Dutch participation exemption offers simplicity and efficiency. Combined with the Netherlands' extensive tax treaty network and favourable approach to withholding taxes, the Netherlands is a highly practical jurisdiction for international group structuring.

One notable difference between the UK and the Netherlands is the way in which the tax authorities interact with taxpayers. The UK system is often perceived as more formalistic and, in certain cases, increasingly adversarial, particularly in complex or high-value tax matters.

By contrast, the Dutch tax environment has traditionally been built on a principle of horizontal monitoring and co-operative compliance. In other words, taxpayers and the tax authorities are expected to engage transparently and constructively, with an emphasis on resolving issues early rather than litigating them later.

In practice, the above translates into tax authorities that are relatively approachable and willing to engage in dialogue, discuss positions and - where appropriate - provide advance certainty. Although the Dutch authorities have become more critical in recent years - especially where international tax matters are concerned - the overall approach remains pragmatic and solution driven.

This difference is particularly relevant during the entry phase into the Dutch market. At this time, early alignment on tax positions (e.g. permanent establishment, VAT treatment or transfer pricing) can prevent costly disputes down the line.

And so?

This means that UK businesses can often address tax risks early and pragmatically. Instead of waiting for audits or disputes, they can proactively engage with the Dutch tax authorities and reduce uncertainty from day one.

When should you call us?

At an early stage - before or shortly after entering the Dutch market - especially if your structure involves cross-border activities, Dutch branches or complex VAT positions. Early engagement is key to securing a smooth landing.

Conclusion

The Dutch tax authorities' approach generally favours dialogue over dispute. For growing businesses, this can make expansion faster, smoother and more predictable.

● **Corporate Taxation gap no. 2**

Cooperative compliance and proactive tax engagement

Floating charge vs. Dutch pledges

|| Specialist | Janina Maduro

In the UK, security measures are generally considered to be comprehensive and reassuring. By combining fixed and floating charges, all present and future assets, can be combined into one single security package. As the business evolves, it is assumed that security will evolve accordingly. This assumption does not translate well to the Netherlands. Dutch law does not provide for debentures as English law does or for any universal security on all assets. Security measures must be implemented on an asset-by-asset basis. Receivables, inventory, bank accounts, shares and immovable property: each requires its own form of pledge or mortgage, each with distinct rules on creation and perfection. The difference is not conceptual but mechanical.

In the UK, comfort is often reflected in the wording of an 'all-assets' clause. In the Netherlands, the decisive question is whether the legal requirements are met for each individual asset. The asset must be existent (or arise in the future from a legal relationship that has been sufficiently defined at the time of vesting), transferable, pledged or mortgaged properly. In the absence of any of these elements, the intended security is null and void and considered non-existent, particularly in the context of insolvency. An omnibus pledge agreement under Dutch law may resemble a debenture in appearance, but the mechanics of implementation are the same as asset-by-asset pledging. It is important to note that an omnibus pledge does not guarantee perfection, nor does it automatically address imperfections in the initial stages of creation.

The gap rarely manifests itself at the initial signing stage. This issue comes to light later, either during the enforcement process, when an insolvency practitioner ascertains what constitutes part of the secured estate, or when there are found to be several security holders.

And so?

An 'all-assets' clause does not constitute all-assets security in the Netherlands. A security is only established when each asset has been identified and specified, pledged or mortgaged properly and perfected. A deliberate, asset-by-asset approach is required, aligned with the business's operational processes.

If you are working on the basis of UK assumptions, it is important to note that discrepancies may only become apparent in the recovery stage.

When should you call us?

- If the financing is UK-led, but assets are legally based in the Netherlands;
- In instances where receivables, cash or future stock are used as key collateral (e.g. in ABL structures);
- To ensure that priorities and enforceability are established with clarity prior to the onset of stress, distress or insolvency.

Conclusion

In the UK, securities are governed by the terms of the contract in question. In the Netherlands, contracts are subject to specific security law and case law.



In the UK, syndicated financing structures are traditionally built around trust or agency-like concepts. A security trustee or security agent holds, manages and enforces collateral – each within its own legal construct – on behalf of a group of lenders. This approach is efficient, flexible and deeply embedded in UK finance practice.

The assumption that syndicated loans are based on legal concepts alike does not travel well to the Netherlands.

Dutch law does not have or recognise trusts or agency concepts in secured lending in the same way. Under Dutch law, security is closely tied to the existence of a concrete and enforceable claim held by the security holder. In other words, security must be legally connected to the loan and the lender. If this connection is disrupted, the effectiveness of the security itself may be at risk. A third party like the security trustee or security agent is not recognised as a lender with the capacity to hold the associated security.

The above becomes particularly relevant where a UK-style syndicated loan is combined with security governed by Dutch law. This gap usually arises when enforcement is initiated or when an insolvency practitioner is assessing which claims and assets form part of the secured estate.

Dutch legal practice bridges this gap through the use of a parallel debt structure. A parallel debt creates an independent claim in favour of the security agent, ensuring that the connection is maintained with the security provided by Dutch law and is enforceable. Without such structuring, a security package may look familiar on paper but lack enforceability when it matters most.

And so?

Where Dutch collateral is involved, the continuity of security requires deliberate legal structuring. This structuring must preserve the legal connection between efficient the creditor, claim and collateral. This usually involves the creation of a proper parallel debt, carefully-aligned transfer mechanics and confirmation that the security agent itself holds a valid claim under Dutch law.

When should you call us?

- When structuring a syndicated loan with Dutch collateral;
- When a syndicated loan is governed by Dutch law;
- Where a loan may be transferred from one lender to another and security must continue to be effective;
- When a security agent is expected to hold and enforce Dutch security;
- When transferring from one security agent to another;
- When enforcement risk is real and timing or value preservation matters;
- When you want the structure stress-tested before signing.

Conclusion

In the UK, financing structures rely on security trusts and security agents; these concepts do not exist under Dutch law. In the Netherlands, certainty is derived from a robust structure.

● **Financing, Securities & Insolvency
gap no.2**

UK syndicated loans vs. Dutch syndicated loans



Entering the public tender market: good preparation is half the work

|| Specialist | Jack van Beers

To be able to participate in European public procurement procedures in the Netherlands, companies need a TenderNed account with eRecognition. While this is common practice for Dutch companies, it is not self evident for British companies to have a TenderNed account. In addition, any company wishing to submit a bid in European public procurement procedures in the Netherlands must submit an ESPD (European Single Procurement Document).

The ESPD is a standardised form that companies are required to complete if they wish to participate in European public procurement procedures. It serves as a self declaration in which a company demonstrates that it is financially sound, acts with integrity and has the professional capability required to perform the contract in question. The document must be completed accurately, as even minor mistakes can result in exclusion from the procurement procedure.

Companies must also submit several specific documents, such as an extract from the Dutch Chamber of Commerce, a statement from the tax authorities and a GVA declaration (Declaration of Conduct for Public Procurement). A GVA is an official document that is issued by the Dutch Ministry of Justice and Security. It confirms that the company acts with integrity and does not have a criminal record that would preclude participation in a public contract.

And so?

To obtain a TenderNed account with eRecognition and the documents referred to above, a British entity entering the Dutch public procurement market must take action in a timely manner. During the procurement procedure, it is also important to ask questions via the Notes of Information (Q&A) about what an British entity needs to do to comply with the various requirements. For example, what will suffice if an British entity cannot provide a specific document (like a GVA declaration)?

When should you call us?

Dutch public procurement law contains specific rules; non-compliance with these rules often leads to exclusion from the procedure. Therefore, it is advisable to seek assistance as soon as possible when participating in a procurement procedure. In this way, we ensure that you submit your tender promptly and correctly, without the risk of your bid being declared invalid.

Conclusion

Dutch public procurement law contains specific rules and requires specific documents as well as a TenderNed account. Start preparing on time and seek legal advice as soon as possible to increase your chance of submitting a tender that is both valid and successful.

The Dutch public procurement procedure is governed by fixed rules and strict deadlines. After the publication of a European procurement procedure on TenderNed, a process with clearly-defined stages begins, such as the Q&A phase (Notes of Information), the submission of tenders and the evaluation. Failure to comply with these rules can have serious consequences.

One common mistake is to miss deadlines. Questions about the procurement documents may only be submitted within the specified time limit. Companies that miss the deadline will, in principle, forfeit their right to raise any ambiguities. Short forfeiture periods apply after an award decision as well; objections must be raised or summary proceedings initiated within the time frame in question.

The principles of equal treatment and transparency apply too. This means that all bidders must be treated equally and that the contracting authority may not deviate from the rules announced in advance. Tenders that fail to fully comply with the requirements or that deviate from the prescribed format may be set aside. The possibility to remedy deficiencies at a later stage is limited and is applied strictly on the basis of both European and Dutch law.

And so?

It is important for bidders to ensure that procurement documents are critically reviewed immediately after publication. Any ambiguities or irregularities must be raised promptly via the Notes of Information. Speed is also essential after the award decision: any party that disagrees with the outcome must act within the relevant time limit. Therefore, a well-organised internal planning process and a legal review are essential.

When should you call us?

If you have any doubts about how to interpret the procurement documents, want to submit questions in the Notes of Information or are considering challenging an award decision (whether final or provisional). It is also advisable to seek immediate legal advice if exclusion has been threatened or a dispute arises about the possibility to remedy deficiencies.

Conclusion

Procurement procedures are highly formalised and deadlines are strict. Companies that act too late or submit an incomplete tender run the risk of being excluded. Timely legal guidance helps to maximise opportunities and limit risks.

● Public Procurement gap no. 2

Participate in public tenders: be active from the start



Dutch bagatelle exemption for 'minor' cartel infringements

In the UK, an anti-competitive agreement, decision or concerted practice between or among (an association of) undertakings can breach the cartel prohibition, regardless of its effect on the market. An infringement is established if the object of any of the above is to restrict, distort or prevent competition and has the potential to affect trade or is likely to have a substantial, immediate and foreseeable effect on trade. Naturally, an anti-competitive agreement, decision or concerted practice can be allowed if efficiencies sufficiently outweigh the anticompetitive effects.

In addition to an exception for efficiency improvements, the Dutch legislative framework offers leeway through the national 'bagatelle exception'. This applies irrespective of the type of agreement. In short, the prohibition does not apply to the cartel activity of:

- (i) a limited number of small undertakings. This is the case if no more than eight undertakings are involved and their combined turnover does not exceed the relevant turnover thresholds;

and

- (ii) undertakings with small market shares, provided the activity cannot negatively and appreciably influence trade between Member States.

And so?

In the Netherlands, not every cartel infringement automatically triggers the applicability of the cartel prohibition. Small-scale collaborations are exempted - even if they constitute major infringements - when a limited number of undertakings are involved and certain turnover thresholds are not exceeded, or if the companies concerned have a small market share and the conduct does not affect inter-EU trade. An exception also applies for efficiency improve-

ments, for which application and enforcement may differ from what you are used to in the UK.

The bagatelle exemption should *not* be associated with low risk or a lower risk. It is narrow, fact-specific and unavailable where EU competition law applies. The practical takeaway is to assess, as soon as possible, whether Dutch law offers genuine breathing space and to what extent this scope is likely to disappear once markets, turnover or cross border effects grow.

When should you call us?

- When assessing whether a collaboration, joint initiative or information exchange is permitted under Dutch competition law;
- When you find yourself confronted with questions on the applicability of the Dutch cartel prohibition from a counterparty that is using 'cartel infringement' as an opportunist argument to prevent the conclusion of an agreement (as arrangements contrary to the prohibition are null and void given the risk of sanctions);
- When turnover, market share or geographic scope is changing and could push an arrangement outside the bagatelle exemption.

Conclusion

In addition to the exemption for efficiency improvements, Dutch competition law offers flexibility for collaborations that are genuinely of a small-scale nature. If you can rely on this bagatelle exemption, the cartel prohibition does not apply. This should be monitored continuously, as a 'minor' agreement can grow beyond the exemption once the company scales up or crosses borders.



Traditionally, acquisitions and mergers only fell within the Dutch merger control regime if the statutory turnover thresholds were met. Transactions below these thresholds were generally considered outside the scope of the merger review of the Dutch Authority for Consumers and Markets (Dutch competition authority: ACM).

This has no longer been the case since 1 September 2025. The rule stipulating that the creation of a concentration cannot constitute an abuse of a dominant position has been removed. As a result, ACM may now investigate certain acquisitions, mergers and joint ventures that fall below the merger control thresholds.

The change outlined above is the result of developments in European competition law and provides for an additional tool to address market consolidation. The focus is particularly on situations in which an undertaking with a dominant position strengthens its power through the acquisition of smaller players. This is especially relevant in fragmented markets where a series of individual small acquisitions could gradually lead to a significant reduction of competitive pressure.

Although ACM has to meet a high evidentiary threshold to establish an abuse of dominance, the risk of regulatory intervention is no longer limited to transactions requiring a merger filing.

And so?

Staying below the Dutch merger control thresholds no longer guarantees that a transaction will escape competition law scrutiny. Companies with a strong market position should ascertain as soon as possible whether an acquisition could raise concerns, even if no notification obligation exists. Given the above, competition law is becoming an increasingly important part of transaction planning.

When should you call us?

- When acquiring a competitor or a business active in the same market;
- When your organisation has a strong market position or significant market share;
- When pursuing a growth strategy through multiple smaller acquisitions;
- When assessing whether a transaction could attract ACM attention despite falling below the merger control thresholds.

Conclusion

Competition law risks are no longer limited to transactions that trigger the merger filing thresholds. Certain below-threshold acquisitions can now be scrutinised under the prohibition on abuse of a dominant position. Early assessment helps identify risks before a completed transaction becomes the subject of an ACM investigation.

● Competition gap no.2

Competition law risks for below-threshold acquisitions

Freeze first: seizure as leverage

UK businesses often see ‘freezing’ an opponent’s assets as an exceptional endgame move. Interim relief (like a freezing injunction) exists in England and Wales, but it sits within a litigation culture shaped by strict pre-action conduct and structured disclosure. Pre-action protocols require parties to exchange information, narrow down issues and consider settlement or ADR before proceedings are instituted. Once proceedings begin, disclosure and inspection rules create transparency between the parties.

In the Netherlands, the pressure point can be felt earlier. The Dutch procedure offers a powerful security tool: pre-judgment attachment (*conservatoir beslag*). Leave is typically sought ex parte, the debtor is usually not heard first and courts decide quickly. The remedy can be to freeze bank accounts, receivables and other assets before the merits are decided, which shifts settlement leverage straight away.

All the above matter even if the main proceedings belong elsewhere. If the debtor has assets in the Netherlands, a claimant may seek Dutch attachment in support of foreign proceedings: either after the foreign claim has been issued, or before it is started, with the Dutch court setting a deadline. Timing and translations then matter.

Leave is conditional on starting the main action within a set period. Dutch court guidelines usually stipulate 14 days, although a longer period can be justified where the merits will be litigated abroad or in arbitration. Debtors often respond via summary proceedings (*kort geding*) to seek release. Attachment may also be lifted if sufficient security is provided, e.g. a bank guarantee. While attachment can be powerful, courts tend to be more cautious where it would target trading stock or assets essential to ordinary business, effectively choking the debtor’s operations.

The ‘gap’ here is practical: in Dutch disputes, asset security can be the opening move, not the endgame. If you only start thinking about immediate relief once the conflict is upon you, you may already be negotiating under a frozen-assets scenario.

And so?

If Dutch litigation risk is on the horizon, make asset risk and enforcement strategy part of your commercial planning. A Dutch counterparty can seek attachment early; you need an early view on exposure, where assets sit, how contracts allocate forum/law and what your immediate response would be if accounts or receivables are frozen.

When should you call us?

- When a dispute is brewing and your Dutch counterparty could use attachment as leverage;
- When you need a fast, defensive plan (or offensive play) involving summary proceedings;
- When enforcement across borders (Dutch assets / Dutch forum) matters commercially;
- When you want to pressure-test cost/settlement dynamics early (Dutch cost regime is not ‘US-style’, and fees are typically not fully recoverable - except in the case of specific exceptions).

Conclusion

Dutch disputes can become operational reality fast: assets first, merits later. An appropriate early strategy prevents ‘security measures’ becoming business-stoppers - and can turn them into leverage when you need it.



As a UK business, you will be familiar with the concept of court relief. In England and Wales, interim injunctions and other interim remedies may be available if immediate protection is needed. They are usually approached as applications connected to existing or proposed proceedings: evidence-led, carefully framed and subject to procedural safeguards like undertakings and notice requirements.

In the Netherlands, urgent relief has a more prominent and independent role in commercial litigation. Article 254 of the Dutch Code of Civil Proceedings (*Wetboek van Burgerlijke Rechtsvordering*) allows an interim relief judge to grant an immediate provisional measure in urgent cases, where the interests of the parties require it. The Dutch term for these proceedings is '*kort geding*'.

Why is this a 'cliff edge'? Because a Dutch *kort geding* can be the first real court battle in a dispute situation. Formally, it is provisional: the court does not finally determine the merits; full proceedings could also still follow. The court cannot grant a declaration of rights. Usually, there is no room for extensive evidence-taking either, e.g. hearing witnesses. Instead, the judge assesses urgency, the parties' interests and the likely legal position based on a fast, pragmatic record. Therefore, the normal burden of proof is less rigid than in full proceedings.

Commercially, the decision can still be decisive. It may determine what happens while the dispute is ongoing, which party performs temporarily and which party bears the operational risk before a final judgment is obtained. Appeal is possible but will not remove the immediate impact of the order.

The above is important for UK businesses entering the Dutch market. A Dutch counterparty may seek a fast provisional order and use the decision to shape commercial reality. The Dutch solution is straightforward: do not treat urgent relief as an afterthought. The first question - who is right? - is often accompanied by a second: what needs to happen now?

And so?

Reality: in the Netherlands, a provisional judgment can still be commercially decisive. A *kort geding* is not a final resolution of the merits, but it may determine the position that matters most in practice.

What to do: assess urgency early. If Dutch litigation risk is on the horizon, decide whether you need to take action before the other party, defend quickly or stabilise your position before the other side sets the pace.

When should you call us?

- When a Dutch dispute cannot wait for the usual proceedings;
- When urgent relief may affect performance, continuity, access or reputation;
- When you receive a *kort geding* summons and need to respond quickly;
- When the merits matter, but the immediate commercial position matters more.

Conclusion

Dutch litigation is not always trial-first. Although a *kort geding* is formally provisional, it can move at business speed. The party that understands this first may find itself in control of the first round — sometimes, it's the first round that really matters.

● Litigation gap no. 2

When urgency
drives the
dispute



Business Setup: Location and Lease

Expanding your business from the UK into the Netherlands starts with finding the right premises. However, it is equally important to ensure that the lease agreement matches your business activities. This is an area where Dutch law differs significantly from UK law.

Unlike UK law, Dutch law does not distinguish between leases and licences. Instead, different statutory tenancy regimes apply, with the main distinction for businesses being between 290-commercial business premises and 230a premises (office space).

Commercial business premises are intended for businesses that are open to the public, e.g. shops, restaurants and hotels. Office space includes offices, warehouses, banks and other premises that do not qualify as commercial business premises.

Why does this matter?

Because legal protection differs substantially.

Leases for commercial business premises are heavily regulated. They are generally entered into for an initial five-year term, followed by an automatic five-year extension. A landlord can only terminate a lease on specific statutory grounds.

Far greater contractual freedom applies for office space. Landlords and tenants are largely free to negotiate the term of the lease, termination rights and other key provisions. While this flexibility can be commercially attractive, it also means that a tenant may have considerably lower level of statutory protection.

Choosing the wrong tenancy regime - or assuming that the contract alone determines which regime applies - can be responsible for expensive problems later. Whether a lease falls within a particular statutory regime depends not just on the wording of the agreement but also on the nature of the business carried out from the premises.

And so?

The reality: a lease agreement is more than just a commercial document. It determines which mandatory Dutch tenancy rules apply and can significantly affect your rights if your relationship with the landlord changes.

What to do: before signing, ensure that both the premises and the lease agreement are a good fit with your business activities. The right tenancy regime will provide you with legacy certainty and help avoid costly disputes in the future.

When should you call us?

- When establishing your business in the Netherlands and selecting suitable premises;
- When you need advice on which Dutch tenancy regime applies to your activities;
- When negotiating or drafting a commercial lease agreement;
- When reviewing a proposed lease to identify risks and negotiate more favourable terms.

Conclusion

Choosing the right premises is only half the job. Choosing the right Dutch tenancy regime is equally important. A well-structured lease agreement gives your business the legal certainty it needs to establish and grow in the Netherlands with confidence.



In the UK, arranging a lease and fitting out a commercial space is often a relatively streamlined exercise. Planning permission may already be in place for a given use class; a tenant can frequently start operations once the lease is signed and the fit out is complete, subject to limited additional approvals.

In the Netherlands, the same 'plug & play' assumption can quickly unravel. Using a property for your intended business activity - even if it seems obvious - may require a specific permission under the Dutch Environment and Planning Act. The legal focus is not just on the building itself but also on the use of that building in a spatial and regulatory context.

So, multiple layers can come into play:

- Is the intended use permitted under the zoning plan?
- Does the fit-out require permits or other government consent?

Crucially, even though landlords, agents or local practice may reassure you that 'it should be fine', this does not create legal certainty. The risk sits with the operator. If the use in question is not permitted (or is not permitted yet), the municipality can take enforcement measures in the form of warnings, fines, or even closure orders.

If a UK business is moving fast - signing a lease, investing in a fit-out and hiring staff - it can be a hard blow to find that the required permissions are missing or could be challenged. Unlike a purely contractual issue, this is a public law risk that can directly affect your ability to operate.

The Dutch system is clear but front loaded: regulatory alignment must be achieved before anything else.

And so?

In the Netherlands, a signed lease does not give you operational freedom. You must verify that your intended use is legally permitted - and, where necessary, obtain the relevant permits and comply with local regulations - before committing capital and launching operations.

The safe approach: diligence first, lease second, and fit-out third. Align zoning, permits and operational reality early, to avoid your opening timeline being scuppered by regulatory surprises.

When should you call us?

- When you want to arrange a lease in the Netherlands and want certainty that your intended use is permitted;
- When you are planning a fit-out, change of use or operational setup that could trigger permitting requirements;
- When a landlord or agent tells you that something 'should be fine' and you want to verify the legal position;
- When timing is critical and you need a realistic view on permitting lead times and risks;
- When enforcement risk (complaints, neighbours, and/or competitors) could impact your operations.

Conclusion

Opening a Dutch location is not just a property-related decision - it's a regulatory one too. Getting it right upfront protects your timeline, your investment and your ability to operate from day one.

● Construction & Tenancy Law gap no. 2

Why opening your Dutch location involves more than just a lease and a fit-out

Employer liability

UK employers expanding their operations to the Netherlands may find that employer liability there seems familiar at first glance. However, it operates on fundamentally different legal mechanics.

In the UK, employer liability is built around classic fault-based principles: negligence, reasonableness and proof. The employee must demonstrate that the employer has breached its duty of care and that this breach caused the injury in question. Even statutory health and safety rules function primarily as evidence of what is reasonable, rather than as an automatic trigger for civil liability.

Cross the Channel, however, and risk allocation is completely different in the Dutch system. Under the Dutch Civil Code, employer liability is anchored in a statutory duty of care combined with a reversed burden of proof. Liability follows once an employee has established that an injury occurred in the course of employment, unless the employer proves that reasonably-required safety measures were taken, or that the injury was the result of intentional conduct or conscious recklessness on the part of the employee.

These differences create a structural gap for UK employers:

- Safety compliance alone does not determine liability in the UK but often does in the Netherlands;
- Evidential comfort under English law does not automatically translate into Dutch litigation;
- The risk calculus shifts from 'can the claimant prove fault?' to 'can the employer fully exculpate itself?'

Also, the absence in the Netherlands of a general statutory insurance obligation - contrasted with mandatory employers' liability insurance in the UK - means that many UK businesses may underestimate where the real exposure lies when employing staff in the Netherlands.

And so?

The key realization is that Dutch employer liability is not an adjusted version of UK negligence law, but a fundamentally different system with a different default outcome. For UK employers, this means that:

- policies, training and risk assessments that are 'reasonable' by UK standards may be insufficient under Dutch law;
- documentation and the enforcement of safety measures are critical, not just best practice;
- litigation strategy shifts from contesting fault to proving compliance in detail.

When should you call us?

- When employing staff in the Netherlands and assessing whether UK-based health and safety frameworks align with Dutch standards;
- When structuring cross-border employment, secondments or group-wide safety policies;
- When an incident has occurred and UK-based decision-makers are assessing liability based on familiar negligence assumptions;
- When reviewing insurance coverage for Dutch operations in light of Dutch liability exposure;
- When facing a claim in which the burden of proof - and, therefore, litigation dynamics differs from the UK model.

Conclusion

In the UK, employer liability hinges on fault and proof. In the Netherlands, it depends on compliance and documentation. The alignment of safety policies, documentation, governance and insurance with the Dutch statutory duty of care is not a formality; it's the difference between a defensible position and structural exposure.



UK businesses that sell to consumers in the EU often assume that consumer law remains broadly aligned post-Brexit. In practice, this alignment is continuing to break down.

In recent years, the EU has substantially modernised its consumer protection framework, with a strong focus on digital services, online sales and sustainability. Key EU directives adopted in 2019 and 2024 have strengthened consumer rights, expanded information obligations and introduced tougher enforcement mechanisms, including significant fines for large-scale infringements.

Since Brexit, the UK has no longer been required to implement new EU consumer directives. As a result:

- EU consumer directives adopted after 31 January 2020 do not apply in the UK;
- UK consumer law continues to be primarily based on the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008;
- newer EU rules, e.g. on digital content, online marketplaces and green marketing, may apply to EU-facing activities but are absent from UK domestic law.

The above has created a regulatory gap. UK companies may be fully compliant at home but exposed when selling to EU consumers, simply because the legal standards they are used to no longer align with the rules applicable throughout the EU.

And so?

The practical takeaway is that consumer compliance can no longer be treated as one-size-fits-all. For UK businesses active in the EU, this means that:

- EU consumer law may impose additional obligations that do not exist under UK law;
- reliance on UK-standard terms and conditions may be insufficient or even unlawful for EU consumers;
- marketing practices that are acceptable in the UK may trigger enforcement risks in the EU, particularly where sustainability or digital services are concerned;
- divergence will probably increase over time, as new EU reforms are implemented and UK law remains static or develops in a different direction.

In other words, compliance with UK law does not guarantee compliance with EU consumer rules.

When should you call us?

- When selling goods or digital services from the UK to consumers in the Netherlands or elsewhere in the EU;
- When reviewing or updating terms and conditions that are currently based on UK consumer law;
- When launching online platforms, digital services or sustainability-focused marketing within the EU;
- When assessing regulatory risk following new developments in EU consumer law;
- When you want a clear, practical view on whether EU-specific consumer compliance is required for your business model.

● Liability, Insurance & Litigation gap no. 2

EU consumer protection after Brexit

Conclusion

Today, UK businesses that target EU consumers are operating in a split regulatory environment: they may be familiar with UK rules at home but are finding themselves confronted with increasingly stringent and evolving EU standards abroad. Businesses that identify this gap early can adapt their contracts, practices and risk management accordingly.

Representation structures: classification determines the cost

Athlete representation is often treated as a contractual relationship in which the key terms of engagement (including cost allocation) are determined by agreement between the parties concerned. In many jurisdictions, including England, this approach is reflected in practice. Representation agreements typically set out the rights and obligations between the athlete, the engaging organisation and the agent, allowing for a degree of flexibility in how services are structured and remunerated.

In the Netherlands, athlete representation is not governed solely by contracts or sports regulations but is also shaped by mandatory employment law principles under the Dutch Placement of Personnel by Intermediaries Act (Waadi). Other national and/or international sport-specific regulations may apply too, further shaping the regulatory framework that governs athlete representation.

Where agents are involved in establishing an employment relationship (e.g. negotiating player contracts), this may qualify as job placement (*arbeidsbemiddeling*) within the meaning of Waadi. In such cases, a work-seeker may not be charged for these services. For example, in professional football, this principle is further specified and reinforced by specific regulations of the Royal Netherlands Football Association (KNVB).

As a result, fee allocation, in respect of employment-related representation, is constrained by law and regulations to a significant extent rather than being completely open to negotiation. However, Waadi will generally not apply in situations where an agent is involved in purely commercial activities; this is because employment is not agreed on in a situation of this nature.

Therefore, the key difference is structural. In England, athlete representation remains primarily a matter of contract within a regulated but relatively flexible framework. In the Netherlands, it operates at the intersection of sports regulation and mandatory employment law, which can significantly constrain how relationships are structured and how fees are allocated in the context of employment-related services.

And so?

Not all agent services are treated equally. In the Netherlands, the legal classification of the service (employment-related or purely commercial) determines which party ultimately bears the cost.

With the above in mind, it is important to clearly distinguish between employment mediation and commercial representation when structuring deals. In the case of employment-related services, fee allocation may be constrained by mandatory law, regardless of contractual intent. Failing to draw this distinction up front may result in unintended cost allocation.

When should you call us?

- When structuring athlete representation arrangements involving employment-related services in the Netherlands;
- When assessing whether or not an agent's services qualify as job placement (*arbeidsbemiddeling*) under Waadi;
- When determining which party will legally bear the cost of agent fees in player contract negotiations;
- When combining employment-related representation with commercial activities like sponsorships;
- When interpreting and applying national and/or international sports-specific regulations that may affect athlete representation and fee structures.

Conclusion

Athlete representation may appear to be a matter of contract. However, in the Netherlands, it is shaped by a legal framework that extends beyond sport itself. Where representation relates to employment, mandatory rules may dictate which party bears the cost. Therefore, a clear distinction is essential between employment-related and purely commercial services, in order to ensure both compliance and deal structures that are commercially effective.

Sponsorship and endorsement agreements with athletes are typically structured as commercial contracts. In practice, significant emphasis is placed on careful drafting, with clauses designed to define rights, obligations and risks as precisely as possible. In jurisdictions like England, this approach generally aligns with how contracts are interpreted in practice.

In the Netherlands, contract interpretation is governed by the so-called Haviltex doctrine. This entails the assessment of contractual terms based on the reasonable expectations of the parties in light of all the relevant circumstances, as well as their wording. This is particularly relevant for sponsorships and endorsements, which are often complex and rely on broadly-formulated provisions, e.g. image rights arrangements, exclusivity restrictions, remuneration structures and termination rights.

In a Dutch context, commercial contract provisions may not be interpreted strictly based on their wording. The scope of such provisions may also depend on the parties' (i) negotiations, (ii) conduct and (iii) broader commercial relationship. Even where provisions appear clear, their practical effect may differ depending on how a court reconstructs the parties' mutual understanding.

The above creates a distinct risk for international brands. Sponsorships and endorsements typically include governing-law clauses. Dutch law is often chosen, partly because many sports and lifestyle brands have established their European headquarters in the Netherlands. Because of this, parties find themselves operating under a legal framework that differs from their expectations. Therefore, even carefully-drafted agreements may be interpreted differently, while unwritten understandings may still play a role. In practice, this means that drafting alone is not decisive: how the agreement was negotiated and how the parties have acted will also influence how the court ultimately interprets the contract.

And so?

In the Netherlands, even carefully-drafted clauses may not operate exactly as written. Their meaning can shift depending on the broader context of the parties' relationship and conduct. As such, it is important not to rely on drafting alone. Ensure that key commercial assumptions are consistently documented and reflected throughout negotiations, communications and performance. When entering into sponsorships and endorsements in a Dutch context (e.g. through a governing law clause), it is important to anticipate how the contract might be interpreted in practice, to ensure that the deal is what you had intended and retains its commercial value.

When should you call us?

- When drafting or negotiating sponsorships or endorsements that are governed by Dutch law;
- When assessing the enforceability of key clauses like exclusivity and termination rights under Dutch law;
- When disputes arise about the interpretation and/or scope of sponsorships or endorsement agreements.

Conclusion

Regardless of how carefully sponsorships and endorsements are drafted, agreements governed by Dutch law are shaped by the parties' interpretation of the various clauses, which can itself be influenced by the broader context, including negotiations, conduct and mutual expectations. Recognising this dynamic early allows parties to structure their agreements more effectively and better safeguard the intended commercial outcome.

● Sports Law gap no. 2

Interpretation of sponsorship and endorsement agreements under Dutch law



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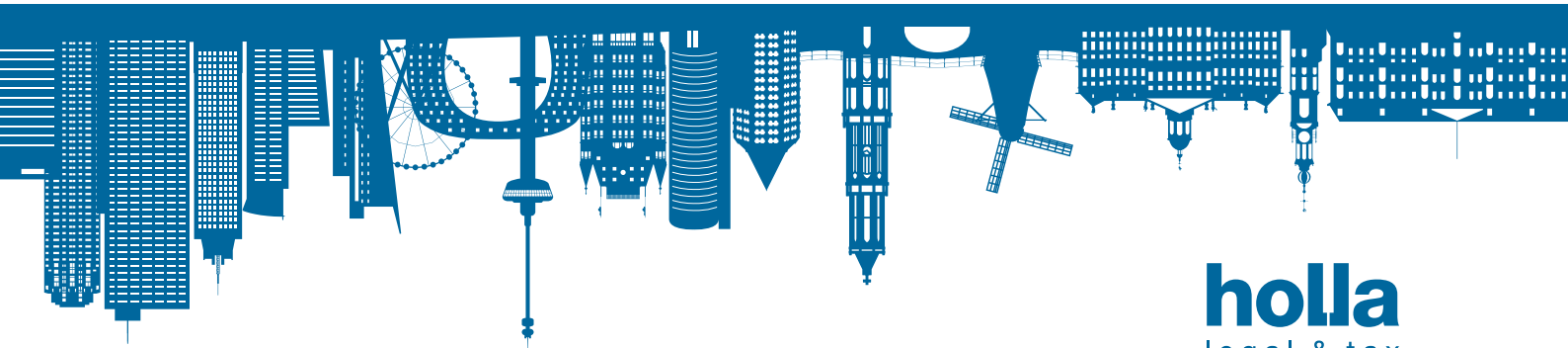


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