

**Onderzoekcentrum Onderneming & Recht (OO&R)
(Business & Law Research Centre)**

Self-evaluation report 2014

Period 2008-2013

Part A: Description of the institute

Part B: Description of the research programmes

Radboud University Nijmegen



Onderzoekcentrum Onderneming & Recht (OO&R)
(Business & Law Research Centre)

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Preface

As laid down in regulations for public research organizations in the Netherlands (KNAW, VSNU, NWO), the Business & Law Research Centre (Dutch abbreviation 'OO&R') is externally evaluated every six years according to the Standard Evaluation Protocol (SEP 2009-2015).

The OO&R has prepared the associated self-evaluation report for the years 2008-2013.

The self-evaluation report consists of three parts:

- Part A Description of the institute
- Part B Description of the research programmes
- Part C Appendices/Full list of publications

Part C of the report is presented in a separate publication.

Part A and B are presented in this report.

With many thanks to all persons who have contributed to this self-evaluation report.

Prof. C.J.H. Jansen
Chairman of the OO&R
June 2014

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Part A: Description of the Institute

1. Objectives and Research Area

Introduction

The Business & Law Research Centre (*Onderzoekcentrum Onderneming & Recht, OO&R*) conducts high-quality academic research in the field of business-oriented private law. The OO&R is a scientific institute, recognised since 1998 as a research school by the Royal Dutch Academy of Arts and Sciences (*Koninklijke Nederlandse Akademie van Wetenschappen, KNAW*) of the Faculty of Law of the Radboud University, collaborating with fifteen renowned law firms, financial institutions and companies, operating both nationally and internationally.¹ Research at the OO&R covers complex legal issues that are highly relevant at the national, European and global levels for the operation of businesses in important sectors of society (for example, large and small businesses and industries, banks and pension funds).

Besides the cross-fertilisation of theory and practice, which profoundly characterises OO&R's approach, there are three main research methods that are predominant in the Centre's research: (i) the effect of European and international law on national law (ii) comparative analysis, historical or otherwise, of the legal systems in European countries and beyond; and (iii) a focus on economic aspects. The OO&R endeavours to inform and support the legislator, the courts and legal practitioners, and contributes nationally and internationally to the development of rules, principles and best practices in the field of Business and Law with publications, seminars and professional legal education.

There is a strong interaction between the research undertaken by the OO&R and two of the LLM degree programmes at Radboud University: the practice-oriented and accredited LLM programme in Business & Law and the accredited Research programme in Business & Law. Many of the OO&R staff have teaching positions at the Centre for Professional Legal Education (*Centrum voor Postacademisch Juridisch Onderwijs, CPO*) in Nijmegen, which is the largest and leading centre for post-academic education in the Netherlands.

Vision: the OO&R supports:

- a) excellent understanding of positive law as the basis for OO&R's area of research; the name "OO&R" signifies a high standard of quality for all its research activities;
- b) academic innovation with a focus on the fundamentals and principles of (primarily business-oriented) private European law, both in the Netherlands and internationally;
- c) academic integrity and independence²;
- d) specific attention to practice and valorisation, in particular through OO&R's excellent network in legal practice, its different book series (see Part C, appendix 4) and the journal *Jurisprudentie Onderneming & Recht*;
- e) commitment among researchers, a positive and stimulating working climate, and a national and international network.

¹ Aegon N.V., Akzo Nobel N.V., Allen & Overy, De Brauw Blackstone Westbroek, Clifford Chance, Freshfields Bruckhaus Deringer, Houthoff Buruma, ING Groep N.V., Loyens & Loeff, Nauta Dutilh, Pels Rijcken & Droogleever Fortuijn, Rabobank Nederland, Stibbe, Stichting Eumedion and Stichting Pensioenfonds ABP.

² The Board of the Business and Law Research Centre states its commitment to the 'Declaration of Scientific Independence' of the KNAW, regarding the independence of its researchers when carrying out contract research for external parties. Researchers conducting research commissioned by third parties (contract research) are expected to negotiate an agreement with these parties to ensure that the research findings will not be improperly influenced. Moreover, the Board expects its researchers to observe the standards of conduct recorded in the regulations on academic integrity. Preventing academic fraud, such as avoiding plagiarism, is embedded in the education of students and junior researchers. They receive explicit training in searching legal literature, how to cite legal sources, drafting literature lists, and writing case notes. Research results are tested by means of internal peer review, executed within the programmes of the research centre. In 2014 a meeting on academic integrity was organised for the complete staff of the OO&R.

Mission of the OO&R:

- a) to conduct high-quality (national and international) academic research in the field of Business and Law;
- b) to enhance the understanding of the theories that apply to Business and Law in the light of social, economic, political and financial developments;
- c) to encourage practicality in academic research, particularly through analysis of the basic principles and foundations of (business-oriented) private law in the light of their practical application;
- d) to explore and initiate applications of academic research, for example, in the area of national and international rules, principles and best practices;
- e) to educate and supervise students during their Master's phase and young researchers working within the OO&R.

The OO&R aims at excellence. The conclusion following the international peer review committee in 2008 was: 'The research of the OO&R is excellent, often ground breaking and fundamental'.³ In 2013, the Mid Term Review Committee concluded: 'The committee considers the OO&R's research in general as excellent'. The committee also observed that the OO&R has been able to maintain the same level of excellence (determined by the KNAW in 2008) in all parts of its research.⁴

Objectives: the OO&R's course:

- a) the OO&R is the leading academic legal research institute in the field of civil law in the Netherlands; it plays an important role at the European level and its researchers have a lot of international contacts. Its programme leaders always ensure that their programmes are *state of the art*;
- b) the OO&R is expanding every year; every permanent member of the OO&R's staff publishes at least two articles a year in a Dutch journal (from the so-called A-list⁵); the OO&R also aims to have two PhD ceremonies per research programme every year, and PhD students praise the OO&R for its working environment and supervision; the OO&R submits at least two research grant applications each year (Research talent and Veni);
- c) all research programmes contribute to the internationalisation and the Europeanisation of research, for example by organising international working groups or through publication of books; the programme leaders stimulate research abroad and every two years, staff members publish their articles in an international journal;
- d) supporting economic research – if relevant – is the permanent focal point within the OO&R's research;
- e) the OO&R organises at least one seminar or conference per research programme every year; Members of staff increase OO&R's visibility by showing their affiliation with the OO&R in their publications; the OO&R publishes two books in the regular series (the *OO&R Series* or the *Van der Heijden Series*) every year.

Research Area and Programmes

The OO&R has four closely connected research programmes, the structure of which has evolved over time.

- (1.1) Company Law (the 'Van der Heijden Instituut': G. van Solinge);
- (1.2) Finance, Security Rights and Insolvency Law (S.E. Bartels and N.E.D. Faber);
- (1.3) Business and Patrimonial Law (C.H. Sieburgh and S.E. Bartels);
- (1.4) Financial Law (the '*Instituut voor Financieel recht*': D. Busch).

The Company Law programme focuses on the ways in which companies come into existence, operate and work together. The central themes are: corporate governance, legal forms, liability, agency, financing business operations and dispute resolution in the corporate world (corporate litigation).

The Finance, Security Rights and Insolvency Law programme covers two research areas that are closely connected. Research in financing and security rights is mainly concerned with the analysis of the different ways in which businesses find the resources for funding their operations and the different types of security (both proprietary and personal security) that is provided in terms of financing (pledge, mortgage, retention of title,

³ *Research Assessment OO&R 2008*, p. 16.

⁴ *Rapport evaluatiecommissie Onderzoekcentrum Onderneming & Recht (2013)*, p. 1 and p. 2 (quotation).

⁵ See for 'A-journals' the topic of Publication culture in this general introduction. 'A-journals' include *RM Themis*, *Nederlands Tijdschrift voor Burgerlijk Recht (NTBR)*, *Ondernemingsrecht*, *Tijdschrift voor Financieel Recht*, *Weekblad voor Privaatrecht, Notariaat en Registratie (WPNR)*, *Tijdschrift voor Insolventierecht (TvI)*, *Groninger Opmerkingen en Mededelingen*, etc.

financial collateral arrangements, securitisation, legal concepts of fiduciary duty, etc.). Research in the field of insolvency law focuses on companies in financial distress.

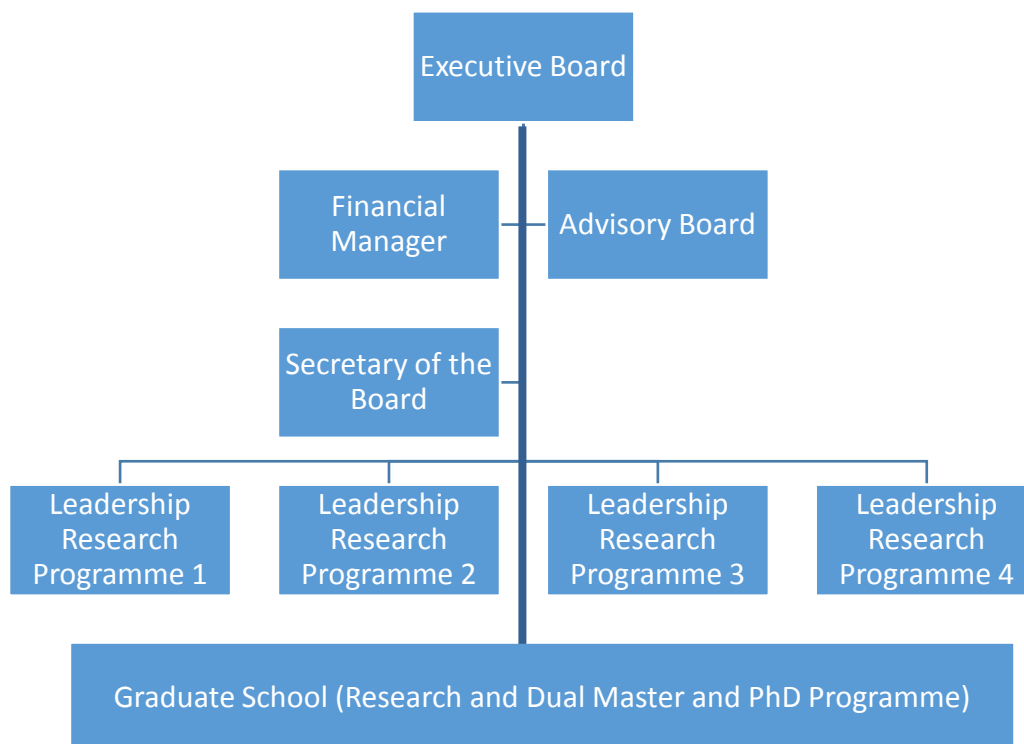
The Business & Patrimonial Law programme involves research into the system and doctrines of private law and its underlying principles (property law and the law of obligations) that are important for the daily operations of businesses. This research plays a vital role in defining the scope of patrimonial law in a commercial context. Research into European private law is a key element of the programme because European law is gaining greater significance in the commercial legal practice.

The Financial Law programme focuses on private law and banking and securities law, as well as the regulation of the behaviour of actors on the financial markets (for example, businesses in the financial sector such as banks). The key themes of this programme are the regulation and operation of capital markets, investor protection, supervision, symmetry of information, admission to the markets and liability. Research in financial law has a strong cross-border focus and takes into account the perspectives of business law, civil law, criminal law and administrative law.

Given its unique position and the fundamental character of its research themes (property, contract, liability, asset management, damages, etc.), research programme 1.3 (Business and Patrimonial Law) forms the basis for the OO&R's three other research programmes. A good example is the concept of liability. This topic is examined in programme 1.3 as a doctrine of patrimonial law. The application of liability is studied in the different research programmes; in programme 1.1 (Company law): the liability of directors; in programme 1.2 (Finance, Security Rights and Insolvency Law): the liability of insolvency administrators and in 1.4 (Financial Law): the liability of asset managers and prospectus liability. In 2008, the peer review committee described programme 1.3's position as follows:⁶

‘The necessity of this research programme for the whole of the OO&R is clear. Legal research directed to businesses in patrimonial law is without use if the core principles of patrimonial law are not well understood. All legal persons, whether being businesses or not, are in fact dealing with the same legal questions.’

The organisational diagram of the Centre is as follows:



⁶ *Research Assessment OO&R 2008*, p. 25.

2. Composition

Internal organisation

The OO&R has an Executive Board and an Advisory Board (which oversees its actions). The Executive Board is assisted by the Faculty's Financial Director for financial, HRM and other managerial and operational issues. The members of the Boards are appointed by the Board of the Nijmegen Law Faculty. The Executive Board of the OO&R consists of the following members (with corresponding responsibilities):

- Prof. S.C.J.J. Kortmann (honorary chairman and advisor);
- Prof. C.J.H. Jansen (chairman; responsible for personnel policy and education);
- Prof. S.E. Bartels (member, responsible for research);
- Prof. N.E.D. Faber (member, responsible for finances);
- Prof. M.P. Nieuwe Weme (member; responsible for contact with the partners); and
- N.S.G.J. Vermunt LLM, MSt (secretary).

Together, the Executive Board and the professors supervising the four research programmes at the OO&R closely monitor the quality, coherence and innovative force of the programmes, the performance of the researchers and the quality of research. The board has drafted several qualitative and quantitative criteria for the admission of researchers to the research centre. These can be found on the OO&R's website.⁷ The Board also publishes a digital newsletter twice a year to facilitate internal communication and communication with the partners of the OO&R and other interested parties. The leadership of the Centre has been awarded the highest score in the Research Assessment Report (2008) of the International Peer Review Committee. The following comments were made in par. 2.1 of the report: 'In the Committee's judgment, OO&R has excellent overall leadership in its chairman and members of the Executive Board and in the programme leaders of the respective research programmes. All leaders interviewed share an ambitious, coherent and enthusiastic vision of the institute's present and future position in research nationally and internationally.'

The Executive Board of the OO&R and the research programme leadership have strengthened their focus on business-oriented law in comparison with the previous research period. The Business and Employee (*Onderneming en Werknemer*) programme, with its strong focus on public law-oriented research, has been discontinued. Research pertaining to Employment Law has been divided between programme 1.1 (Company Law, *Ondernemingsrecht*) and 1.3 (Business and Patrimonial Law, *Onderneming & Algemeen Vermogensrecht*). In 2008 Financial Law became an independent programme. Since that moment the knowledge and understanding of Financial Law have been increased considerably. Two new partners (Aegon and Freshfields Bruckhaus Deringer) have brought a great deal of new *know how* and contributed to a broader network. The new programme has enhanced OO&R's reputation and increased its visibility. Tax Law has been removed from programme 1.1 (Company Law) because it did not have much common ground with business law. These changes were inspired by the strategy of the OO&R Board and programme managers to ensure the internal cohesion of the programmes.

Special Strategy and Policy Instruments

The policy pursued by the Board of the OO&R aims to ensure national and European prominence and academic excellence. Together with the Board of the Radboud University and the Board of the Nijmegen Law Faculty, the OO&R has developed a special strategy and a range of policy instruments.

One of the most vital policy instruments within the OO&R is the supplementary professorial plan (supplementary in relation to the faculty professorial plan). The appointment of professors for 0,2 FTE on specific research areas that are relevant to the OO&R provides a well-focused impetus to research, which enables the OO&R to generate external research funding. The OO&R professors usually have obtained some type of external funding (i.e. non-university funding). A number of research Chairs have been established, including: Asset Management, Financial Regulations, Banking and Securities Law, Corporate Criminal Law, Law and Corporate Ethics, Insolvency Fraud and German Private Law.

Another policy instrument used by the Board of the OO&R is that of a rotating professorship or chair (*wisselleerstoelen*). The OO&R makes a temporary chair available (generally for two or three years) to professors who are specialised in particular fields, with the aim of further enhancing its international profile.

⁷ See <<http://www.ru.nl/oor/onderzoek/toelatingcriteria/>>.

The availability of such temporary chairs also facilitates the work carried out by the international working groups established by the OO&R, which often requires the services of professors living abroad.⁸

Well-balanced Age Structure and Diversity

The OO&R has been successful in attracting a group of relatively young professors. The OO&R's Board members and programme managers are in their thirties (D. Busch), forties (S.E. Bartels, N.E.D. Faber, M.P. Nieuwe Weme and C.H. Sieburgh) and early fifties (C.J.H. Jansen and G. van Solinge). This has guaranteed the continuity of the OO&R following the (temporary) departure of a number of important persons (notably S.C.J.J. Kortmann, C.M. Grundmann-Van de Krol and A.S. Hartkamp). The other professors are also in their forties (P.M. Veder) and fifties (for example, C.J.M. Klaassen, L.G. Verburg and H.L.E. Verhagen) while the next generation is emerging (C.D.J. Bulten, J.B. Spath and B.J. de Jong).⁹ Apart from that, the OO&R has also been able to attract a few experts in specific areas of legal practice (for example, F.E.J. Beekhoven van den Boezem, D.R. Doorenbos, J.J. van Hees, R.H. Maatman, N. van Tiggele and V.P.G. de Serière). The OO&R's aim was to honour the following comment from the peer review committee in 2008: 'The coherence and continuity (...) is outstanding.'¹⁰ The Mid Term Review Committee supported this opinion: 'The OO&R's vitality has been safeguarded.'¹¹

Table 1: Research Staff at OO&R (in research fte and absolute) (SEP-Table 5.2)¹²

<i>Ia: research fte</i>	2008	2009	2010	2011	2012	2013
Tenured staff	7,49	7,94	8,65	10,01	9,61	10,95
Non-tenured staff	5,65	4,67	5,83	6,38	8,42	8,77
PhD-students	12,71	12,09	14,02	13,45	10,41	12,2
Total research staff	25,85	24,7	28,5	29,84	28,44	31,92
Support staff	3,8	3,8	3,8	3,8	3,8	3,8
Total staff	29,65	28,5	32,3	33,64	32,24	35,72

<i>Ib: absolute</i>	2008	2009	2010	2011	2012	2013
Tenured staff	42	32	37	39	50	48
Non-tenured staff	17	20	25	30	33	35
PhD-students	18	20	23	20	19	21
Total research staff	77	72	85	89	102	104
Support staff	10	10	10	10	10	10
Total staff	87	82	95	99	112	114

Table 1a shows the progressive growth in research staff during the evaluation period. One of the OO&R's objectives is to engage and maximise the research potential of its partner institutions through the appointment of research fellows. These research fellows are working on a zero-hours contract and, consequently, are not visible in table 1a. Table 1b shows the absolute figures, including research fellows.

⁸ Rotating OO&R professors in the past: Prof. D. Hayton, Prof. A. Flessner, Prof. E. McKendrick, Prof. W.W. McBride and Prof. T. Richter.

⁹ J.E. Jansen is professor of 'special aspects of private law' (0,2 FTE) at the University of Amsterdam since September 1st, 2013. Dr. T. Keijser was associate professor at the University of Tokyo from 1 March until 1 May 1 2013. Prof. N. van Tiggele is also a professor at the Erasmus University Rotterdam. Prof. H.L.E. Verhagen is the successor of Prof. C.J.H. Jansen as a professor of Roman Law in Amsterdam. Prof. P.M.Veder is recommended by the Dean of Nottingham Trent University for a position as a visiting professor at this university.

¹⁰ *Research Assessment OO&R 2008*, p. 16.

¹¹ *Rapport evaluatiecommissie Onderzoekcentrum Onderneming & Recht (2013)*, p. 2.

¹² Tenured staff: professor, associate professor, assistant professor. Non-tenured staff: researchers, post docs, lecturers, fellows.

3. Research Environment and Embedding

National and International Positioning

The area of research at the OO&R comprises *all* fields of law relevant to the operations of businesses: Company Law, Finance, Security Rights and Insolvency Law, Financial Law, European Private Law, Property Law, Contract Law, Employment Law, Insurance Law, etc. This particular format is unique in the Netherlands. The international peer review committee made the following observation in its report of December 2008:¹³

‘This [intensive collaboration with legal practice in all these areas] makes the research institute unique in its kind in the Netherlands and possibly also in the world. It is one of the major factors contributing to the outstanding position of the institute.’

In 2013, the Mid Term Review Committee explicitly advised that the OO&R should maintain its focus, to ensure that its research continues at the highest level.¹⁴ The OO&R’s accreditation as a research centre by the KNAW in 2003 and 2009 endorses the quality of the research centre. There is no other research centre in the Netherlands with the same focus and a KNAW accreditation. The OO&R tried to obtain official recognition as a NWO Graduate School but unfortunately, these efforts were unsuccessful. However, the reviews of the OO&R’s scientific quality and educational programme were very positive (see Appendix 1).

There are smaller research centres and programmes in the Netherlands in the field of Business Law; some years ago the *Vrije Universiteit Amsterdam* founded ZIFO, the ‘*Zuidas Instituut voor Financieel en Ondernemingsrecht*’. The OO&R distinguishes itself from this centre and other research programmes through its scope and the defining characteristics of its research such as the study of the entire breadth of business-oriented law and the effect of European law and international law on national law.

National and International Collaboration

Apart from its fifteen partners, the OO&R also has a number of long-term associations:

Collaboration with economists:

1. Netspar; a national and international partnership of economists working at universities, pension funds and insurance companies, in the field of ageing population, pensions and asset management, hosted by Tilburg University (since 2011/2012);
2. Chair of Corporate Finance and Chair of International and Financial Economy at the Nijmegen School of Management (since 2012).

Collaboration in the field of European Private Law and Legal History:

1. The Max Planck Institute for foreign and International Private Law (Hamburg), in particular by organising seminars in and research visits to Hamburg.

Other Partnerships:

1. Oxford International and Comparative Insolvency Law Series (ICIL Series). The ICIL Series provides a detailed comparative analysis of all important aspects of national insolvency laws and practices in major economically developed and emerging countries. The Series will ultimately consist of fifteen handbooks and constitutes a partnership between Faber, Vermunt, a foreign professor at the OO&R (often occupying a chair in rotation) and approximately twenty insolvency law specialists from all over the world.¹⁵
2. International Working Groups (IWG). Every research programme at the OO&R incorporates one or more IWGs (see Objectives), comprising one or more researchers at the OO&R and international researchers. They conduct research into a communal theme of European or international importance and their results are usually published in book form through an international publisher. The Institute of Financial Law, for example, launched an IWG on Liability of Asset Managers (consisting of 26 leading

¹³ *Research Assessment OO&R* 2008, pp. 9-10.

¹⁴ *Rapport evaluatiecommissie Onderzoekcentrum Onderneming & Recht* (2013), p. 2.

¹⁵ Two volumes have been published. Dennis Faber, Niels Vermunt, Jason Kilborn and Tomas Richter (eds), *Commencement of Insolvency Proceedings* (2012) and Dennis Faber, Niels Vermunt, Jason Kilborn and Kathleen van der Linde (eds), *Treatment of Contracts in Insolvency* (2013).

academics and practicing lawyers in the field of financial law) in 2010¹⁶ and an IWG on Alternative Investment Funds in Europe in 2011. Sieburgh and Hartkamp are developing a *Ius Commune* Case Book on European Private Law and the *Van der Heijden* Institute started an IWG on the functioning of one-tier and two-tier boards in Europe in 2010.¹⁷

A great many PhD researchers at the OO&R are conducting research as a guest researcher at foreign research institutes or universities, such as the Max Planck Institute in Hamburg, the University of Oxford, and several universities in Belgium, South Africa and France. Incorporating work experience at a foreign research institute in the structure of their research proposals deserves recommendation since it contributes to the increasing internationalisation of research. It offers PhD researchers the opportunity to establish a professional network and learn a foreign language. Among the permanent researchers working at foreign research institutes for extended periods of time were e.g. Busch in Genova, De Jong in Cambridge, Sieburgh in Florence and Wolters in Michigan, USA. The OO&R Board welcomes the challenge of getting more papers published in international journals, writing more foreign-language papers and increasing its cooperation with foreign researchers and institutes. In short, the Board aims at strengthening of its international network.

Number and Affiliation of Guest Researchers

There were a lot of guest researchers working at the OO&R during this review period. Over the past few years, the IWGs have ensured a constant flow of researchers (about fifty in total, usually professors and sometimes practising lawyers) into the Netherlands, especially in Amsterdam (where the meetings were held on the premises of one of the OO&R's partners) and Nijmegen. The OO&R hosted a rotating chair for the Belgian *Tijdschrift voor Privaatrecht* for two professors (Prof. S. Scott and Prof. B. Demarsin).

The visiting professors working at the OO&R (during this review period McBride, Kilborn and Richter) usually stay in the Netherlands for one month a year. Prof. L. MacGregor and Prof. H. Schulte-Nölke have been the Temporary Professors at the OO&R since 2013. Prof. Schulte-Nölke is also teaching courses within the Netherlands-Germany Master's programme of the Faculty of Arts at the Radboud University.

There are also a few individual guest researchers active in Nijmegen, especially at CIDOR. The best known among them are Prof. R.F. Broude from the USA and G. Cavalier from Lyon.

4. Quality and Scientific Relevance

The previously mentioned peer review committees have assessed the OO&R's publications as 'very good' or 'excellent' in terms of quality and quantity. The OO&R Board and programme leaders continue to pursue a focused publication policy (see Objectives):

- a) the OO&R has defined clear objectives regarding the number and types of publications;
- b) the OO&R aims to publish in 'A-journals';
- c) the OO&R promotes a proper balance between the different types of publications and values the publication of case notes; and
- d) the OO&R ensures that PhD students are receiving high quality supervision and guidance.

Publication Culture at the Dutch Faculties of Law

The NWO and KNAW recognise that the different academic disciplines have their own publication culture.¹⁸ In the area of law, and therefore also applicable to the OO&R, national publications remain important because there is a national legal system and a national legal practice. The OO&R serves the legal practice with research, education, legislative proposals, advice and recommendations, etc. These are primarily written in the Dutch language. This contributes to the valorisation of research results at the OO&R. When publications target an international audience (for example, in the field of financial law and European private law), the research centre will publish in the English or German language. There are four types of publications within the field of (Dutch) civil law: journal articles, books (series or handbooks) and volumes, book contributions and annotations. There is a national and European consensus on this legal 'publication culture'.¹⁹ The OO&R contributes to all types of

¹⁶ D. Busch and D.A. Demott (eds), *Liability of Asset Managers* (Oxford University Press 2012).

¹⁷ P. Davis, K. Hopt, R.G.J. Nowak and G. van Solinge (eds), *Corporate Boards in Law and Practice. A Comparative Analysis in Europe* (Oxford University Press 2013).

¹⁸ See *Onderzoek Publicatieculturen NWO-MaGW: Resultaten* (Den Haag 2013). The results correspond with the KNAW advice *Kwaliteitsindicatoren Sociale Wetenschappen*, also from 2013.

¹⁹ Except in the area of publications. Not every European country uses annotations due to the differences in publications on case law in Europe.

publications and the Board and programme leaders ensure a proper balance between these types of publications. The OO&R researchers are known to publish more annotations than any other research institute due to the OO&R's specific focus on the legal practice, and the fact that the OO&R publishes its own case-law journal (*Jurisprudentie Onderneming & Recht*). A national list of top journals does not exist, even though there is a consensus of judgment on journals that are of *good quality* – the so-called 'A-journals'. A journal is qualified as 'good' on the basis of the quality of its editorial staff (whether they have a doctorate) and their critical editing skills. The OO&R Board and programme leaders aim to have their work published in 'A-journals' (see Objectives).

Depending on its quality, a book or volume may carry more weight than an article because books generally provide a more structured overview of the research area (consider, for example, the authoritative Asser-series in the broad field of private law)²⁰ or promote entirely new areas of study.²¹ This is exactly what the OO&R has been doing in the field of Insolvency Law, European Private Law and Financial Law. Another objective of the OO&R is to have its books published through renowned foreign publishers. The editing of a book or series also contributes towards the academic reputation of the researcher and the research institute because it shows that a researcher has an extensive network of contacts. In 2012, the peer review committee endorsed the importance attached to the publication of handbooks by the OO&R.²²

Most Significant Highlights at the Institutional Level

- a. breakthrough research in the areas of European Private Law and Financial Law;
- b. Handbook series on Insolvency Law and books on Company Law, Agency Law and Financial Law through Oxford University Press;
- c. the *OO&R Series*, the *Van der Heijden Instituut Series* and the *Jurisprudentie Onderneming & Recht* publications (please refer to Part C, Appendix 4);
- d. PhD student publications in 'A-journals' (please refer to Part C, Appendix 3).

More detailed information on key publications and the most significant books is provided for in Part B.

5. Output

Number of Publications

In the past years, OO&R's scientific output was of a very high standard. The total number of publications has gradually increased during the evaluation period. The Board of the OO&R is especially proud of the growing amount of international refereed publications, including the books published by Oxford University Press.

Number of PhDs

Twenty-seven PhD researchers were awarded a PhD degree in the evaluation period 2008-2013: Company Law: 8; Finance, Security Rights and Insolvency Law: 5; Business & Patrimonial Law: 14. These numbers indicate an average of approximately five PhDs awarded each year, which is an improvement compared to previous assessments. The first PhD-candidate in the field of Financial Law started in 2009. He has nearly finished his thesis.

²⁰ OO&R professors are involved with the Asser books on contract law (Hartkamp and Sieburgh), property law (Bartels), business law (Nieuwe Weme and Van Solinge; Rensen; Van Olffen), private international law (Verhagen and Vonken), European Private Law (Hartkamp) and Agency Law (Kortmann).

²¹ See *Onderneming en Financieel Toezicht* (2010); *Onderneming en Sanctierecht* (2013) and *Aansprakelijkheid in de financiële sector* (2013).

²² *Rapport Evaluatiecommissie Onderzoekcentrum Onderneming & Recht* (2013), p. 2.

Table 2: Main categories of research output OO&R (SEP-Table 5.3)

	2008	2009	2010	2011	2012	2013
International refereed articles, books, book chapters	8	7	8	10	21	20
National refereed articles	33	41	53	60	51	41
Non-refereed articles	3	8	20	10	12	17
Monographs, handbooks, proceedings, inaugural lectures and scientific reports	10	13	15	9	19	16
Articles in books/proceedings	34	31	35	44	50	48
PhD-theses	3	3	3	9	4	5
Professional publications	51	45	54	72	60	83
Case notes	62	48	64	58	87	77
Other research output	0	1	1	3	5	10
Total	204	197	253	275	309	317

6. Earning Capacity

Table 3: Sources of financing at OO&R (based on research fte) (SEP-Table 5.4)

	2008	2009	2010	2011	2012	2013
Funding						
Direct funding ²³	1.452.186	2.007.971	2.287.860	2.360.989	2.432.334	2.764.969
	65%	72%	71%	70%	73%	73%
Research funds ²⁴	0	66.082	73.570	76.593	61.843	67.449
	0%	2%	2%	2%	2%	2%
Contracts ²⁵	799.659	730.609	878.691	919.860	843.090	942.860
	35%	26%	27%	27%	25%	25%
Total	2.251.845	2.804.662	3.240.121	3.357.442	3.337.267	3.775.278
Expenditure						
Personnel costs	1.864.980	1.992.762	2.201.369	2.336.086	2.394.709	2.636.206
	83%	71%	68%	70%	72%	70%
Other costs	386.865	811.900	1.038.752	1.021.356	942.559	1.139.072
	17%	29%	32%	30%	28%	30%
Total	2.251.845	2.804.662	3.240.121	3.357.442	3.337.267	3.775.278

²³ University funding

²⁴ KNAW/NWO funding

²⁵ Research contracts obtained from external organisations

In 2013 the total budget of the OO&R was €3.7 mln: €2.6 mln personnel cost and €1.1 mln other costs, mainly consisting of costs for housing, overhead and library costs. Obtaining research grants from NWO is extremely difficult. In 2013 the OO&R succeeded in acquiring one research grant from NWO (the Dutch funding agency) for a project called: *Pre-insolvency arrangements with creditors: how can they be accommodated in Dutch insolvency law?* The OO&R has always been quite successful in earning contract research and funding from external organisations such as the *Stichting Ammodo* and the *Instituut Gak*.

7. Academic Reputation

Boards

Honorary chairman and founder of the OO&R Prof. S.C.J.J. Kortmann was Chairman of the Dutch Insolvency State Committee during the reporting period. Hartkamp is Vice Chairman of the Governing Council of the International Institute for the Unification of Private Law (Unidroit). The chairman of the OO&R, Prof. C.J.H. Jansen, was dean of the Law Faculty at the Radboud University during the years 2008-2010. He has been appointed as a Board Member of the Netherlands Organisation for Scientific Research (*Nederlandse Organisatie voor Wetenschappelijk Onderzoek, NWO*), Division of Social Sciences. Prof. C.J.M. Klaassen has been appointed as a Board Member of the *Commissie Rechtswetenschappen Fonds voor Wetenschappelijk Onderzoek Vlaanderen (FWO)*. Prof. S.E. Bartels was Vice-Dean of Research of the Faculty Board during the period 2011-2013 and Prof L.G. Verburg holds this position since 2013.

Memberships of Academies

Prof. A. Hartkamp is a member of the KNAW. He is also a foreign member of the Hungarian Academy of Science and has been appointed as a member of the Academia Europaea in 2013.

Prof. C.H. Sieburgh has been appointed as a member of the KNAW in 2010. She was a member of the *Landelijk Orgaan Wetenschappelijke Integriteit (LOWI)*.

Key Editorial Positions

The academic reputation of the OO&R researchers is further illustrated by the key editorial positions they hold (or held) at the following 'A-law journals': *Nederlands Tijdschrift voor Burgerlijk Recht*, *Weekblad voor Privaatrecht, Notariaat en Registratie*, *Ondernemingsrecht*, *Tijdschrift voor Insolventierecht*, *Groninger Opmerkingen en Mededelingen*, *Tijdschrift voor Financieel Recht* en *Arbeidsrechtelijke Annotaties*.

Members of the OO&R are on the editorial board of two important case law journals: *Jurisprudentie Onderneming & Recht (JOR)* en *Jurisprudentie Burgerlijk Procesrecht (JBPr)*. They also publish annotations in other authoritative case law journals such as *Nederlandse Jurisprudentie* and *Ars Aequi*.

Furthermore, the researchers at the OO&R are members of the editorial board of the *OO&R Series*, *Series Law of Business and Finance*, the *ICIL Series*, the *Asser Series*, *Monografieën BW* and *Kluwer's Law and Practice-Financial Law Series*.

For brief academic CV's of the key researchers of the OO&R, please refer tot Part C, Appendix 5.

*Awards*²⁶

- The Frye Stipend 2009 for talented female researchers was awarded to C. Rijckenberg
- B.J. de Jong, *Schade door misleiding op de effectenmarkt, Serie vanwege het Van der Heijden Instituut, deel 103, 2010* (Winner of the triennial PhD Harry Honée Proefschriftprijs, 2012)
- The Frye Stipend 2010 for talented female researchers was awarded to I.P.M. Ligteringen
- The G.J. Wiarda thesis price 2011 was awarded to I.V. Aronstein
- The Levenbach price for best employment law thesis (2012) was awarded to Femke Laagland
- The Frye Stipend 2012 for talented female researchers was awarded to C. Spierings
- The Niels Stensen Stipend 2012 was awarded to B.J. de Jong

Acquis Working Group

Prof. C.H. Sieburgh is a member of the Acquis Working Group on Principles of existing European Community Contract Law. Prof. H. Schulte-Nölke is a member of the Acquis Working Group on Existing EC Private Law.

²⁶ Prof. Jansen was knighted in the Order of the Netherlands Lion in 2013.

Uncitral Working Group

Prof. N.E.D. Faber and N. Vermunt (LLM) have contributed to the meetings of UNCITRAL Working Group V (Insolvency Law) and Working Group VI (Security Interests).

Expert Groups

Prof. P.M. Veder and Prof. T. Richter are members of the European Commission Expert Group on Cross-Border Insolvency Law. They are both national experts in an External Evaluation of Regulation No. 1346/2000/EC on Insolvency Proceedings funded by the European (JUST/2011/JCIV/PR/0049/A4)

Concluding Remarks

In par. 2.7 of its Research Assessment Report (2008), the International Peer Review Committee noted:

‘The academic reputation of the OO&R is outstanding. The research institute has in many ways no competition in the Netherlands and is to be considered the absolute top. (...)’

According to the Board of the OO&R this is even more true for this reporting period. More detailed information is provided for in Part B. Many members of the OO&R have given lectures in the Netherlands and abroad (often by request). Appendix 4 (Part C) contains an overview of all books published in the *OO&R* and *Van der Heijden* Series. For a selection of the conferences and the inaugural lectures please refer to Part C, Appendix 5.

8. Societal Relevance: Quality, Impact and Valorisation

Businesses play a crucial role in society and in the world economy. The problems they encounter in their business operations and the national and international regulations they have to deal with are the OO&R’s field of research. The societal relevance of the OO&R’s research has only increased due to the financial crises of the past few years. Because of its large network, the OO&R’s research results are readily used by the legal practice, the legislator and the courts. The peer review committee’s comments²⁷ are even truer now than they were in 2008.

‘The societal relevance is without any question excellent. The relevance of the research by the OO&R is extremely relevant in the Netherlands. It is indispensable for government, legal practice and legal academia. The fact that the OO&R is broadly supported by the highest ranking businesses, law firms and governmental institutions in the Netherlands itself proves not only its excellence in its work and research but above all its relevance.’

Impact and Valorisation

The topics of the OO&R’s research are actual problems that businesses encounter. The aim of the OO&R (in light of its Mission and Objectives) is to increase knowledge of and insight into business-oriented private law at the government level, the academic level and in the professional practice (especially the legal profession and businesses). The distribution of knowledge occurs through books in series, professional journals, annotations (through *JOR*, amongst others), conferences and seminars (usually on the premises of one of OO&R’s partners at their request) and academic and post-academic education.

International

Members of the OO&R advised the IMF regarding domestic insolvency law reform in several countries across the world. Other members of the OO&R took part in the expert group on the review of the European Insolvency Regulation 1346/2000 (Cross-Border Insolvency). Prof. Kilborn chairs a drafting group for the World Bank. Schulte-Nölke, appointed as professor in 2013, is involved with European legislation projects. Prof. Busch is a member of the Consultative Working Group assisting the Investor Protection and Intermediaries Standing Committee of the European Securities and Markets Authority.

²⁷ *Research Assessment OO&R* 2008, p. 16. See also *Rapport Evaluatiecommissie Onderzoekcentrum Onderneming & Recht* (2013), p. 2: ‘De maatschappelijke relevantie staat bij al het onderzoek van het OO&R voorop en is inherent aan het onderzoekcentrum (...)’

National

Researchers at the Van der Heijden Institute are involved with legislation projects of the Ministry of Security and Justice and the Ministry of Finance. They also advise the Dutch Financial Markets Authority (AFM) and members of the Institute for Insolvency Law were involved with drafting a legislative proposal to improve insolvency law and the prevention of insolvency fraud. Researchers at the Institute for Financial Law are regularly invited to advise the Ministry of Finance and the Court of Audit (*Algemene Rekenkamer*).

Memberships of Legislation Advisory Committees

- Prof. C.J.M. Klaassen is a member of the *Adviescommissie voor Burgerlijk Procesrecht*
- Prof. S.C.J.J. Kortmann was chairman of the *Commissie Insolventierecht*
- Prof. G. van Solinge is a member of the *Commissie Vennootschapsrecht*
- Prof. G. van Solinge is a member of the *Capital Markets Committee of the AFM* (the Authority for the Financial Markets)
- Prof. M. van Olffen is the Chairman of the *Gecombineerde Commissie Vennootschapsrecht* of the Dutch Bar Association and the Dutch Royal Association of Civil Law Notaries
- Prof. V.P.G. de Serière is a member of the *Gecombineerde Commissie Vennootschapsrecht* of the Dutch Bar Association and the Dutch Royal Association of Civil Law Notaries

Deputy Judges and Justices

Many of the OO&R's researchers are deputy judge or justice at a court of law or a court of appeal.

Consultancy and Part-time Positions in the Legal Practice

Researchers at the OO&R advise law firms, companies and the government and in some cases they have a part-time position at a law firm (both national and international law firms).²⁸

Centre for Professional Legal Education (CPO)

About thirty OO&R's researchers teach regularly at the CPO (the largest and leading provider of post-academic legal education in the Netherlands), the Grotius Academy (which offers legal specialisation courses), the Law Firm School (which provides professional training for lawyers at the large 'Zuidas' law firms) and the *Beroepsopleiding Advocaten* (national vocational training of lawyers). The OO&R's specific expertise in the field of business law, corporate litigation, finance, security rights and insolvency law, law governing attachments and executions, employment law and financial law is the reason why many of the OO&R's researchers are popular teachers in the field of professional training. This has resulted in a unique form of cooperation between the OO&R and the CPO which benefits both the OO&R's research and the CPO's education. Moreover, this cooperation also generates funding for research (contract funding).

The CPO has its own rotating chair plan. During the review period, the Temporary Professors were Prof. Verburg, Prof. Busch (both were also practising lawyers at that time) and Prof. Hammerstein (former Justice of the Supreme Court). One of their duties during this period was building a bridge between universities and the legal practice.

More detailed information is provided for in Part B.

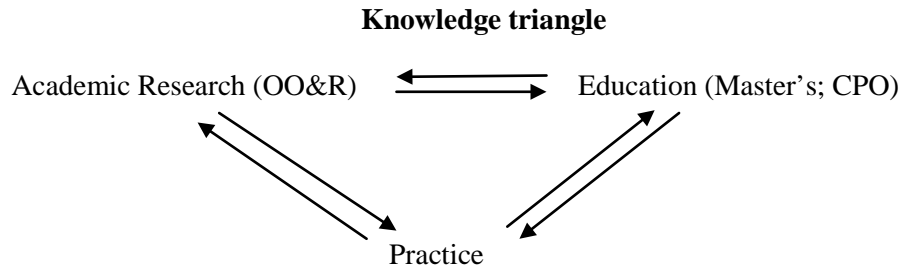
9. Viability

Innovative Capacity

Knowledge, understanding and experience within the OO&R have specific patterns. Researchers and PhD students present their research results during LLM classes (especially regarding the Research Master's and the Practice-Oriented or Dual Master's) while these Master's students discuss the research conducted at the OO&R with their teachers. The cross-fertilisation of post-initial education and legal practice plays an important role, especially within the CPO framework. Researchers at the OO&R are teaching legal practitioners new academic opinions, and they in turn inspire researchers with their feedback. In the field of research, there is also an interaction between research and practice (especially the Research & Development and Knowledge Departments of the OO&R's partners). The publication of the OO&R's researchers is – in part – aimed at the legal practice, which also allows researchers to develop useful contacts with legal practitioners. These legal practitioners in

²⁸ For example, Prof. Faber, Prof. Van Solinge, Prof. Veder and Prof. Verhagen. The same goes for G. Bergervoet, T. Salemink, B.A. Schuijling, F.C.J. Strijbos, N. Vermunt, T. Booms, N. Pannevis and A. Mennens.

turn participate in the research at the OO&R and also publish.²⁹ The students from the Research Master's and the Practice-Oriented Master's also contribute to this knowledge because they complete their internships at one of the partners of the OO&R, while the employees of these partners also teach in the Master's programmes. This interchange of ideas, knowledge and experience within the triangular relationship between research, education (including post-academic education) and practice is known as the knowledge triangle, which contributes to the innovative power and vitality of the OO&R.



All peer review committees have praised the OO&R in the past for its 'state of the art' research.

Available Infrastructure

The OO&R was established in 1991. Prof. W.C.L. van der Grinten and Prof. J.M.M. Maeijer have laid the foundation for its research activities. The OO&R's first recognition as a research centre by the KNAW dates from 1998. During this period, a strong and fruitful research structure has been developed and the form and content of research areas such as Business Law, Finance, Security Rights and Insolvency Law and Patrimonial Law have taken shape in several research and education programmes (including post-academic or professional education). The current generation of researchers continues this rich tradition.

In the summer of 2014, the OO&R (being a part of the Nijmegen Law Faculty) will move to the new Grotius Building. As a result of this move, the library infrastructure will be brand new and research staff will have excellent internet facilities and a sophisticated collection of handbooks and journals at their disposal in an accessible and open environment. The OO&R has its own information specialist and librarian as well as its own specialist library, known as the Centre for Information and Documentation on Business and Law (CIDOR). The library's reference collection is available to staff and students. The OO&R also has its own separate conference room with computers to be used by guest researchers. The collection of hardcopy and electronic publications in the field of domestic, European and international business-orientated private law is rather unique in the Netherlands.

Resource Management

The OO&R Board and programme leaders promote social cohesion among its researchers as much as possible. The Board and the managers focus their attention on discovering new ideas for research and theme ideas for new publications and conferences. Junior researchers are included in the activities of the OO&R, for example, as speakers at conferences and seminars that are held on the premises of the OO&R's partners, by contributing to one of the OO&R's Series or writing a case note in *JOR*. This allows them to publish in a 'safe' environment. In the execution of their HRM tasks, the OO&R Board and programme leaders are assisted by two excellent Faculty members of staff, HR Advisor Bianca van Oijen and Research Policy Officer Pieter Jan Boon.

10. Next Generation: PhD Training

Introduction

Research and education are closely connected according to the Nijmegen Law Faculty. There is also a close connection between these two academic key tasks within the OO&R. Educating students in the Master's phase of their legal studies to become researchers and training and supervising junior researchers at the OO&R are therefore an integral part of the research centre's mission. All aspects of the PhD training provided to students are laid down in the training and supervision plan which is part of the employment contract.

²⁹ Most legal practitioners are fellows but some are part-time professor. Their teaching and research is described in a separate plan for professors.

Research Master of Business & Law

The two-year Research Master's programme of Business and Law, accredited by the Accreditation Organization of the Netherlands and Flanders (*Nederlands-Vlaamse Accreditatieorganisatie, NVAO*), trains students in conducting research in the field of business-oriented private law. The aim of this Master's programme is to teach students thorough knowledge and understanding in the field of Business & Law, to teach academic research skills and to train writing skills.³⁰ As a result, the Master's programme is the ideal preparation for a position at the research centre. Master's students come from Nijmegen as well as other universities. The programme is taught by professors, post-docs and academically-oriented practitioners, ensuring mutual benefit for both scholarship and legal practice. These lawyers also supervise PhD research if necessary. For an overview of the Research Master please refer to Part C, appendix 6.

After graduating, students are able to conduct independent legal academic research, as a PhD researcher or in a position in the legal practice (usually with one of the programme's partners). At this moment (January 2014), thirteen of the Faculty's PhD researchers have completed the Research Master's programme and joined the ranks of the Nijmegen faculty as researcher.³¹

Training and Supervising PhD Researchers

The goal of the training given to PhD researchers is the education and supervision of junior researchers in conducting independent academic research, especially in the field of Business & Law. The training package consists of three parts:

1. Training teaching skills. The OO&R considers teaching skills to be important for research as well. This element of the PhD training builds on the teaching experience from the last year in the Research Master's programme. Upon successful completion of this programme component, participants are awarded a certificate, namely the 'Basis Kwalificatie Onderwijs' (University Teaching Qualification);
2. Training research skills. This programme component consists of an elective programme for all PhD researchers of the Nijmegen Law Faculty;
3. There is a programme specifically designed for PhD researchers at the OO&R. This programme component aims to provide the necessary specialised background knowledge for specific research programmes.

(Ad 2) The elective programme consists of a number of standard components, such as an annual course about the methods and dogmatics of law and the sources of academic and applied legal research, the history of legal PhD research and the PhD conference. In addition, a brochure drafted by a faculty working group on how to design a research plan and a research proposal is available to the PhD supervisor, the daily supervisor and the PhD researcher (*Het opstellen van een juridisch onderzoeksplan. Een handreiking bij het doen van juridisch onderzoek en het maken van onderzoeksvoorstellen*, 2006, 27 pp.)

(Ad 3) The OO&R has its own training programme for PhD researchers. The purpose of this component of the programme is to provide PhD researchers with more specialised knowledge, insights and skills.

PhD researchers are required to take the following courses in the Research Master's programme of Business & Law, unless these courses were part of their prior education: Comparative Private Law, Jurisprudence, European Private Law, Methodology of Law, and Masterly Examples. Masterly Examples is an important course for students and future PhD students because it discusses the methodology of writing an academic article and a PhD thesis. The approach of past legal kingpins serves as inspiration. The courses are offered every year. PhD researchers are also strongly advised to take the Legal English course. These courses are evaluated every year through written questionnaires and so far the results have been positive.

There is a monthly Masterclass Business & Law, a seminar for PhD researchers and junior and senior members of staff, where PhD researchers present and discuss their PhD research. Every Monday, the Civil Law department hosts lunch meetings to discuss a current topic in legal practice. The Van der Heijden Instituut

³⁰ Apart from the Research Master's of Business & Law, there is also a Practice Master's of Business & Law. This Master's programme combines high-level academic education and work experience in the Netherlands and abroad with renowned partners in practice (e.g., international law firms and companies). Three graduates of this Master also joined the ranks of the Nijmegen Law Faculty. One of them has completed his PhD thesis (R.J. van der Weijden, supervisor Prof. S.E. Bartels and Prof. N.E.D. Faber).

³¹ One of them (P.T.J. Wolters, supervisors Prof. C.J.H. Jansen and Prof. A.S. Hartkamp) has completed his PhD thesis; two of them (R. van Leuken and I. Ligteringen, supervisor Prof. C.H. Sieburgh) have finished their manuscript.

organises meetings to discuss recent literature and case law. European Private Law researchers and the *Instituut voor Financieel Recht* also organise meetings from time to time to discuss new developments in their specific fields.

The PhD researcher's training programme also has an individual component that is tailored to the PhD researcher's personal needs; for example, a PhD researcher in Insolvency Law may take the Insolvency Law course at the Grotius Academy, or a course at the CPO or an academic writing course or a course on empirical methods. The OO&R organises a seminar every six months with one of its partners about a current topic in business-oriented private law (for example, flexible private limited companies or the credit crunch). PhD researchers and Research Master's students are invited as well. The same goes for conferences with a connection to the OO&R. Other courses, not particularly aimed at business-oriented private law, are offered as well, such as 'Law and World War Two' and 'Law and Literature'.

Learning Outcomes for the PhD Training

PhD researchers who successfully complete their training are able to integrate their theoretical knowledge, insights and research skills in the field of business-oriented private law into an academic approach to analyse legal problems. The ultimate goals are as follows:

- PhD researchers have thorough knowledge of and good insights into the area on which they focus their PhD research;
- PhD researchers have knowledge of and insights into the research methods and working method of the study of private law, in particular the goals and methods of comparative law;
- PhD researchers have knowledge of and insights into the traditions of the study of private law;
- PhD researchers are able to independently frame legal issues and problematise these issues from a perspective which goes beyond the existing legal framework;
- PhD researchers are able to present answers to queries on legal issues both verbally and in writing in a well-structured argument;
- PhD researchers are able to write academic texts;
- PhD researchers possess an academic mindset.

Supervising PhD Researchers

A PhD researcher is supervised by one or more PhD supervisors and/or a daily supervisor. A lawyer of one of the OO&R's partners may also be involved, depending on the nature of the PhD research. The chairman of the OO&R Board is responsible for PhD supervision.

Quality Assurance

The OO&R checks the quality of the research proposals and the progress of the PhD researchers/projects. The following measures have been implemented:

Preliminary Progress

- Each research proposal is subjected to a critical review by the Board of the OO&R. Only proposals which are assessed as excellent by the OO&R Board may be eligible for internal funding by the Faculty. The final assignment of the Research Master's programme of Business & Law, the academic article, will serve as a basis for the research proposal; each research proposal is subjected to a critical review by the Scientific Committee of the faculty;
- The employment agreement comprises a training and supervision plan (*Opleidings- en Begeleidingsplan*). This plan, which is drafted by the PhD supervisor, the researcher and the HR officer, contains the title of the research project, the requirements which the Faculty expects the PhD researcher to meet, the names of the PhD supervisor and the daily supervisor, the frequency of supervision sessions, research and teaching supervision specifically tailored to the PhD researcher's needs.

Progress

- A committee will assess progress after one year and draft a progress report which also contains a recommendation. The recommendation may be negative (the employment contract is discontinued after 18 months), positive, or conditionally positive (an extension period of 5 months will be granted during which the PhD researcher is to achieve a certain target, for example, completing a chapter). The report with the committee's recommendation is discussed by the Faculty Board and,

where necessary, by the Board of the OO&R. The entire procedure is supervised by the Vice-Dean for Research.

- The Board of the OO&R attaches a great deal of importance to the proper supervision of PhD researchers. The Chairman of the Board is responsible for maintaining high quality levels in the PhD training at the OO&R and in this capacity he attends the monthly Masterclass of Business and Law;
- After two and a half years there will be a meeting between the PhD supervisor(s), the daily supervisor, the Dean for PhD research (currently Dr. T. Havinga) and the PhD researcher about the progress of the PhD research. The discussion follows the structure and division into chapters of the PhD thesis. The PhD supervisor reports to the Vice-Dean for Research.
- The Dean for PhD research maintains general oversight and reports annually. Research progress is also reviewed during annual discussions between the PhD supervisors and their PhD researchers. A particular focal point is the deployment of PhD researchers to teaching positions. In principle, PhD researchers only teach two or three courses per semester.

Table 4: Standard PhD-candidates (SEP –Table 5.5)³²

Cohort	Enrolment			Success rates (graduated within x years)								Current status					
	M	F	Total	x≤4		4<x≤5		5<x≤6		6<x≤7		graduated		not yet finished		discontinued	
2005	1	1	2	0	0%	0	0%	0	0%	1	50%	2	100%	0	0%	0	0%
2006	1	1	2	0	0%	0	0%	2	100%	0	0%	2	100%	0	0%	0	0%
2007	1	4	5	0	0%	0	0%	1	20%	0	0%	1	20%	2	40%	2	40%
2008	4	2	6	0	0%	0	0%	2	33%	0	0%	2	33%	3	50%	1	17%
2009	3	2	5	0	0%	2	40%	0	0%	0	0%	2	40%	3	60%	0	0%
Total	10	10	20	0	0%	2	10%	5	25%	1	5%	9	45%	8	40%	3	15%

Table 4 illustrates the success rates of the training and supervision programme of PhD-candidates. In total 15% of the 2005-2009 cohorts dropped out, 45% graduated and 40% is not yet finished. Although barely any PhD-candidate manages to actually complete the entire programme within 4 or 5 years, compared to the former evaluation period less candidates drop out. It seems that the measures that have been implemented by the OO&R from 2004 onwards to improve the success rates, are paying off. Almost all PhD-candidates have teaching and other obligations apart from their obligation to complete their thesis within 5 years. Teaching commitments are substantive (30%). In 2012 the Board of the OO&R has taken additional measures to reduce the burden of teaching obligations.

After finishing their PhD, all PhD's – and even the dropouts – find a job as practising lawyers at big law firms in the Netherlands or as (assistant/associate) professors at the OO&R or other universities.

11. Self-Analysis according to the SWOT Method: Institutional Level

Strengths

The OO&R's mission is to conduct profound practice-oriented academic research. It has formed research partnerships with renowned law firms, financial institutions and companies. Legal research is conducted by academics as well as legal practitioners. Moreover, many practitioners have an academic background because they have, for example, written a PhD thesis. One of the OO&R's objectives is to use and maximise this research potential, even though it is only barely perceptible in the statistics of OO&R's researchers because they have the status of 'fellow' with a zero-hour contract at the Faculty (see Viability).

All research programmes have proven to be functioning very well and to be able to anticipate current events. They have often played an important role in enhancing knowledge in their respective research areas, such as European Private Law and Financial Law. Research into these two research areas has flourished with exceptional publications (please refer to the list of key publications of both programmes).³³ A great number of new volumes have appeared in the two Dutch language series, the *Van der Heijden Series* and the *OO&R*

³² Standard PhD-candidate with employee status and conducting research with primary obligation to graduate. Percentages are related to the total number of each cohort.

³³ A key publication is A. Hartkamp, *European Law and National Private Law* (2012).

Series. The reputation of *JOR* is still unprecedented. A large number of volumes in the authoritative Asser Series were written by authors from Nijmegen. OO&R researchers have also published many articles in the so-called 'A-journals'. According to the OO&R's own judgement, the conclusion of the international peer review committee from 2008 still stands: 'In many respects, law is national and [OO&R's] contribution to Dutch law is excellent'.

The peer review committee noted in 2008 that it would be a challenge for the OO&R as a whole to increase its international output, following the example of the Finance, Security Rights and Insolvency Law programme and the Business & Patrimonial Law programme, which already had a strong international focus. The OO&R has acted on this advice. Its international orientation can be considered one of the OO&R's main strengths. Every research programme incorporates at least one international working group (with the OO&R as initiator and coordinator) or is participating in an international collaborative project. The Van der Heijden Institute cooperates with the Max Planck Institute for Comparative and International Private Law in Hamburg and Oxford University in an international working group on the functioning of one-tier and two-tier boards in Europe.³⁴ Researchers of the Finance, Security Rights and Insolvency Law programme are the founders and editors of a fifteen-volume series of handbooks at Oxford University Press: the *Oxford International and Comparative Insolvency Law Series* (two volumes were published in 2012 and 2013). This series is based on the cooperation with researchers and legal practitioners from twenty different countries. There is also a permanent international working group in the field of security rights. An example in the field of Business & Patrimonial Law is the *Ius Commune Casebook on the Horizontal Effects of Primary EU Law* which was established in 2011; the casebook is a partnership with ten experts from the European Member States. The *Instituut voor Financieel Recht* had an international working group on the topic of Liability of Asset Managers (a book with the same title was published in 2012 by Oxford University Press) and has recently established an International Working Group on Alternative Investment Funds in Europe.

The University's Executive Board has provided the OO&R with extra resources to promote internationalisation. This money is used to fund international working groups, periods of study abroad for PhD researchers, the appointment of PhD researchers, joint occupation of a Chair at the OO&R, the translation of articles into English, etc. The OO&R aims to have more publications in international journals, but because of the long processing time of a publication in a foreign journal, this is a long-term effort. The Mid Term Review Committee determined in 2013 that the international importance of the OO&R's research increases annually. This introduces the OO&R's research to a larger audience and it also serves as a contribution to the establishment of a European discourse.³⁵ In order to enlarge the visibility on a European level the Chairman of the OO&R has written a position paper called *Vision Europe 2020* about developing an innovative and secure European society in a context of ongoing transformations and growing global interdependencies.³⁶ Lastly, another one of OO&R's strengths is the ability to keep contract funding at the same quantity level. This allowed the OO&R to regularly appoint PhD researchers and maintain the high level of its facilities.

Opportunities

The OO&R is a *legal* research centre and the main objective of its research is positive law. However, the legal research is carried out, where applicable, from a non-positive law perspective. Through cooperation between Netspar, the OO&R and the Nijmegen School of Management it has been possible to generate more attention for economic aspects of a particular theme, if they are relevant to the research. There has been close cooperation with economists during the last years of the reporting period, for example in the joint volumes *De Kredietcrisis* and *Onderneming & Pensioen*. Economists (R. Abma (Stichting Eumedion), Th. F. Kockelkoren (Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten, AFM*)), Prof. S.J.G. van Wijnbergen (University of Amsterdam/Amsterdam School of Economics and Tinbergen Institute) and M. Leen (ING), among others) gave presentations at OO&R conferences. These partnerships with economists enable the OO&R to strengthen the interdisciplinary character of its research in programme 1.4, and the OO&R should seize these opportunities. Another example of strengthening the interdisciplinary character is the realisation of a professorship that functions as a bridge between business-oriented law and economics (the appointment of Prof. B.J. de Jong is effective from 1 March 2014).

The OO&R also succeeded in increasing the number of both PhD students and PhD ceremonies. The yearly increase of PhD researchers obtaining their PhD degree since 2010 is partly a result of the improved supervision of PhD researchers (more contact; each PhD researcher has either two PhD supervisors or a PhD supervisor and a daily supervisor) and because the supervisors pay more attention to the formulation of the research question in

³⁴ The book was published in 2013 and further research is currently taking place.

³⁵ *Rapport evaluatiecommissie Onderzoekcentrum Onderneming & Recht (2013)*, p. 2.

³⁶ See <<http://www.ru.nl/law/businessandlawresearchcentre/research/position-paper/>>.

the research. In 2008, the peer review committee expressed its concern about the supervision, which it felt to be 'quite informal and fluid'. Therefore, the committee advised the OO&R 'to invest more in supervision of PhD-researchers, and also to do it on a more structured basis.'³⁷ The OO&R has acted on this advice and has improved both the monitoring of the supervision and the supervision itself. Few PhD researchers drop out. In consultation with the Faculty Board, the OO&R has introduced a stricter system to monitor the progress of PhD researchers. None of the thirteen Research Master's students has dropped out. However, there is still room for improvement, for example regarding the formulation of the research proposals and supervision, so that PhDs can be completed in a shorter period of time.

Weaknesses

The OO&R's financial basis is strong because of direct funding. Compared to other faculties there is enough funding to appoint a student from the Research Master's programme of Business and Law as a PhD researcher every year and the University's Executive Board has made a financial contribution to improve the internationalisation of the research. Even though there is money available from contract funding (for example, contributions from the OO&R's partners to fund PhD researchers), the OO&R has not been as successful in obtaining funds from NWO. The peer review committee noted this long-term lack of success in 2008:³⁸

'The committee wishes to point out that in view of the excellent standing of the OO&R and in view of the excellent fund raising qualities of the OO&R, NWO-funding is too low.'

The OO&R has not been able to halt this downward spiral. Compared to the previous reporting period, there is even less funding from NWO or the European Union. Despite the fact that these past results are disappointing, researchers have attempted to obtain a research position in the open competition every year during this reporting period. Unfortunately, only one research proposal was accepted, despite the fact that some of the proposals received the highest rating (for example, a project in the field of European Private Law, see the SWOT analysis of programme 1.3). A request for three Veni grants (2011/201/2013) and a Vici grant (2009) were rejected as well. Finally, in 2011 en 2012 the OO&R tried to obtain a one million euro grant as part of the NWO Graduate Programme. Even though the foreign reviewers, one of them from the London School of Economics, were highly impressed with the proposal (their evaluations are available), the proposal was rejected. It is clear that the OO&R's success in acquiring contract funding has a negative influence. The OO&R Board has decided to focus its energy on acquiring funding other than NWO funding (see Strategy).

The fact that the OO&R studies the entirety of Business Law can lead to a lack of focus and/or a range of publications that is too fragmented. However, the OO&R Board and programme managers feel that this broad focus is one of the OO&R's strengths. Both the OO&R Board and the programme managers guarantee the cohesion within the research programmes and ensure that the central topics get sufficient attention, for example by producing multi-authored volumes. This prevents fragmentation of focus.

Threats

The OO&R faces few internal or external threats in its research. However, from a political point of view, the future of university education and research is not as bright. The climate for legal research has been unfavourable these past years. There is hardly any room for legal research within the government's top sector policy. The NWO Division for the Social Sciences (*MaGW*) and other organisations have to surrender funds for the benefit of this policy and these funds are therefore lost by the legal discipline.

The increase in scale which occurs in many different fields, including the academic discipline, can be a threat to the OO&R. Medical, social and natural sciences research institutes have developed into massive institutions and are a model to the research institutes in the legal sciences and humanities. This has an influence on the financing of this type of research. The OO&R continues to sustain modest growth.

12. Strategy

- To strengthen the nationally and internationally renowned position of the OO&R as a centre of excellent, fundamental *legal* research with an optimal cross-fertilisation of theory and legal practice;
- To realise the *objectives* of the OO&R (see Part A, p. 2: being the *leading* academic research institute in the four research fields engaged by the OO&R; the publication of at least two articles every year in a leading Dutch legal journal, to organise at least one seminar or congress per research programme every year, etc.);

³⁷ *Research Assessment OO&R 2008*, p. 15.

³⁸ *Research Assessment OO&R 2008*, p. 14.

- To strengthen the *international* exposure of the OO&R
 - a) by encouraging to publish the results of PhD research and of other research projects in international law journals
 - b) by encouraging to establish International Working Groups
 - c) by encouraging the researchers of the OO&R to invite foreign researchers to Nijmegen and to conduct research at foreign Research Institutes;
- To increase the *earning capacity* of the OO&R
 - a) by submitting grant applications at a European level
 - b) by attracting external funding, especially of the partners of the OO&R (in order to compensate the lack of NWO-funding);
- To strengthen the *unique research method* of combining a thorough knowledge of national private law and the effective implementation of European law in the national legal system(s);
- To strengthen the *economic* approach, by enhancing the cooperation with Netspar, the Nijmegen School of Management (especially the chair of corporate finance) and other specialists (especially among the partners);
- To sustain *modest growth* and to enlarge the research capacity by making use of the national, European and international research frameworks within which the OO&R participates;
- To increase *the number of PhD-positions*
 - a) by being attractive for young researchers and for ambitious students (especially of the Nijmegen Research Master Business and Law), because of the excellent facilities (especially in the CIDOR), the possibilities to conduct research abroad, the networks, the use of the opportunities of the new faculty building (Grotius-gebouw), etc.
 - b) by excellent training and supervision of the PhD researchers;
- To maintain *a sharp focus* on business oriented law and to continue the strong societal relevance of OO&R research;
- To be *ambitious* as a researcher and as a research institute;
- To offer *opportunities* to (junior and senior) researchers;
- To be the *greatest place to work*.

Part B: Description of the Research Programmes

Research Programme 1.1 Company Law (the Van der Heijden Institute)

1. Objectives and Research Area

The research programme concentrates on company law in the widest sense. The core of this programme is the study of the law pertaining to companies and legal entities. The programme's mission includes nationally and internationally orientated research, with a strong focus on the requirements of legal practice. As is the case with the other OO&R research programmes, the research programme focusing on company law both as a whole and at the level of individual projects is concentrated on positive law.

The programme covers related fields such as securities law, procedural law and employee participation law. It also includes research on agency law and the representation of companies (in connection with patrimonial law) and various aspects relating to the position of board members. Also worth mentioning in this regard are the internationally orientated research projects on labour co-determination.

Where possible, the economic analysis of law and the history of law are involved in research projects. The European origins and the nature of company law as well as the aspects of private international law and comparative law are systematically embedded into the research. The programme provides the flexibility to cover new developments at national, European and international levels.

Research is conducted within the Van der Heijden Institute. The Institute was established in 1966 by Prof. W.C.L. van der Grinten and Prof. J.M.M. Maeijer as the first centre in the Netherlands for the study of legal entities and company law. In line with a tradition initiated at the time by Prof. E.J.J. van der Heijden in Nijmegen, the main objective of the Institute is to contribute in every conceivable way to the development and a deepening of our understanding of these areas of law. Subsequently, other subjects have been included to cover modern domestic and international developments in company law. In accordance with the tradition in Nijmegen, most of the research is fundamental in nature, while always being closely linked to issues encountered in legal practice. As a result, the Van der Heijden Institute is frequently involved in formulating and analysing proposed draft legislation and it is occasionally commissioned by the government. The publication of handbooks and legal commentaries on company law principles and case law is also part of this fundamental research.

The research findings and results are directly used for teaching purposes (lectures, seminars and educational programmes) in the bachelor's, graduate's, research and dual master's phases. The collaboration within the OO&R with its partners and the additional activities conducted by senior and junior members of the Van der Heijden Institute contribute to an optimal cross-fertilisation of academic research and legal practice.

The research programme of the Van der Heijden Institute comprises four fields:

1. The functioning of legal entities and their organs;
2. The law relating to groups of companies;
3. The infiltration of securities law into corporate law;
4. Corporate litigation.

2. Composition

Table 1: Research Staff 1.1 Company Law (in research fte and absolute) (SEP-Table 5.2³⁹)

<i>Ia: research fte</i>	2008	2009	2010	2011	2012	2013
Tenured staff	2	1,9	2	2,31	2	2
Non-tenured staff	0,6	0,69	0,54	0,82	1,37	1,36
PhD-students	3,28	2,17	2	2,08	1,83	1,81
Total research staff	5,88	4,76	4,54	5,21	5,2	5,17
Support staff	0,4	0,4	0,4	0,4	0,4	0,4
Total staff	6,28	5,16	4,94	5,61	5,6	5,57

³⁹ Tenured staff: professor, associate professor, assistant professor. Non-tenured staff: researchers, post docs, lecturers.

<i>Ib: absolute</i>	2008	2009	2010	2011	2012	2013
Tenured staff	9	9	11	10	11	11
Non-tenured staff	6	6	4	6	8	8
PhD-students	5	4	5	3	3	4
Total research staff	20	19	20	19	22	23
Support staff	1	1	1	1	1	1
Total staff	21	20	21	20	23	24

3. Research Environment and Embedding

3.1 National and International Positioning

By virtue of its close cooperation with legal practice, the Van der Heijden Institute enjoys a rather unique position in the Netherlands (and even abroad). In the words of the 2013 Mid Term Review: ‘The Van der Heijden Institute is among the top in the country and other faculties measure themselves to this’.⁴⁰ Apart from ZIFO (Zuidas Institute for Financial and Company Law, 2010; *see also Part A, p. 6*), the only serious competitor is the Groningen Institute for Company Law (1984), which seeks cooperation at the academic level with the Erasmus University Rotterdam.

Given its dominant position in the Netherlands, the main challenge for the Van der Heijden Institute will be to further explore comparative law and European law research. There are several new initiatives to strengthen its international ties. The Forum Europaeum on Corporate Boards (FECB) in cooperation with Oxford University and the Max Planck Institute Hamburg, resulting in a large comparative study (completed in November 2013), is a significant step in that direction. The FECB is an international working group consisting of scholars and practitioners from ten different jurisdictions in Europe. This broad and fundamental research project aims at a functional analysis of corporate governance systems in Europe. The project has allowed the Van der Heijden Institute to deliver its ambitions on an international level.

Prof. Bulten was selected speaker at the Fourth Max Planck Post-Doc Conference on European Private Law in 2012, which serves as a second starting point for the development of an international network and forms the basis of further research with a comparative law component. Furthermore, De Jong has been appointed as full professor of Capital Markets Law in 2014.

3.2 Number and Affiliation of Guest Researchers (internally and externally funded)

Several PhD and other research projects are conducted by or in cooperation with fellows of the Van der Heijden Institute who are working in legal practice as an attorney-at-law or civil-law notary, mostly with one of the OO&R partners.⁴¹

4. Quality and Scientific Relevance

The quality of research outcome is far above average. The Research Assessment in 2008 classified the programme as ‘excellent’, with an average of 4.9 on a scale of 1-5. In addition, research conducted during the years 2009-2011 was awarded the same rating in the 2013 Mid Term Review, which stated: ‘There is no reason to deviate from this very positive judgment [of the Research Assessment 2008, add.]. The published publications are all of excellent quality.’⁴² Thus, the Van der Heijden Institute provides a constant flow of high-quality research. Major changes in legislation are the subject of fundamental research (primarily research field No. 1). Examples include the law on private limited companies (*BV-recht*) and the law on corporate governance (*Wet bestuur en toezicht*). Publications in this field are often a breakthrough for the legislative process.

⁴⁰ See *Rapport Evaluatiecommissie Onderzoekcentrum Onderneming & Recht* 2013, p. 3: ‘Het Van der Heijden Instituut behoort tot de top van het land en andere faculteiten meten zich hieraan.’

⁴¹ The PhD-fellows are: G.T.J. Hoff (PhD completed in 2011), H.J.M.M. van Boxel (PhD completed in 2011), J.J.M. van Mierlo (PhD completed in 2013), A.F.J.A. Leijten (partner at Stibbe), R.A.F. Timmermans (candidate-notary at Nauta Dutilh), G. Oosterhoff (senior affiliate at Nauta Dutilh), R. Hermans (partner at De Brauw Blackstone Westbroek, work in progress), J.H.L. Lemstra, (partner, Lemstra van der Korst), P. van der Korst (partner, Lemstra van der Korst, PhD completed in 2007).

⁴² See *Rapport Evaluatiecommissie Onderzoekcentrum Onderneming & Recht* 2013, p. 3: ‘Er is geen reden om voor de periode 2009-2011 van dit zeer positieve oordeel af te wijken. De verschenen publicaties zijn alle van een excellente kwaliteit.’

Furthermore, the Van der Heijden Institute initiated an academic discussion on public companies (*NV-recht*) in 2013. The Institute also has a prominent presence in the field of corporate litigation (research field No. 4). One well-received PhD project (*De geschillenregeling ten gronde*, published by C.D.J. Bulten) and two conferences (Disputes in companies, 2009, and Legal personality put in perspective, 2011) are among the highlights. Another PhD project (*De uitkoopregeling* by T. Salemink) was completed in May 2014.

The research conducted by the Van der Heijden Institute has expanded appreciably over the years and includes other subjects under the influence of developments in law and legal practice. The research programme encompasses company law in the broadest sense of the word. In accordance with the Nijmegen research tradition, research into company law is often fundamental in nature while also taking into account all aspects relevant to legal practice. The OO&R and the Van der Heijden Institute have decided that research in the field of taxation will cease to be part of the research programme of the Van der Heijden Institute. The experience in recent years demonstrated that the interfaces between this research area and company law were diminishing. This decision will enhance the coherence of its research programme in the field of company law.

As briefly mentioned above, the biannual Van der Heijden Conferences, hosting speakers from both academia and legal practice, are always well-attended by and have a first-class reputation among opinion leaders in the field of company law. The conclusions and recommendations provided by contributors to these conferences are published in the Van der Heijden Series and usually have a strong impact on legal doctrine and the legislative process. The following Conferences were held during the research project: (1) *Geschillen in de vennootschap* (2009), (2) *Relativering van rechtspersoonlijkheid* (2011), and (3) *Herstructurering van ondernemingen in financiële moeilijkheden*, (2013). In addition to the traditional biennial conferences, members of the Van der Heijden Institute often present papers at conferences and seminars on behalf of the OO&R and other research institutes.

4.1 Most significant Results/Highlights relevant to the discipline, per group/subgroup

As stated earlier, the research programme of the Van der Heijden Institute covers the whole field of company law. Increasingly more attention is being paid to the fundamental aspects, which has resulted in the publication of completely revised editions of four volumes in the Asser Series. Although these handbooks take up a substantial portion of the research time, the Institute's researchers nevertheless publish articles in refereed law journals (both national and international) and case law reviews on a frequent basis. The research findings and results are published in domestic and international series of books as well as in peer reviewed journals of the very highest quality. The *Van der Heijden Series*, the first volume of which appeared in 1968, which will shortly see the publication of volume 125, has been and continues to be authoritative in the Netherlands.

Financial law has grown enormously in importance and scope over the last decades, both in regulation and practice. Therefore, the OO&R has decided that research in the field of financial law will become a part of the new programme 1.4. The liaison between the new programme 1.4 and the research programme of the Van der Heijden Institute remains in the research area of the infiltration of financial law into corporate law, with a special focus on public bids and the future revision of legislation and regulations regarding listed companies. During the period 2008-2013, two PhD theses in this field have been published and two projects are in the process of being completed (on hybrid securities, acting in concert, and protective measures against hostile takeovers).

Special attention is given to the influence of European law in research on the law relating to groups of companies, which resulted in three completed PhD theses on cross-border mergers and the start of a new PhD project on liability of the parent company in connection with the group-exemption regime.

The results of the research project embedded in the FECB were published in 2013 by Oxford University Press. New international research projects relating to the shareholders' position in insolvency and sanctions against fraudulent directors are envisaged.

During the period 2008-2013, eight PhD projects were completed and a dozen PhD research projects were started or prolonged. The research field of corporate litigation has expanded. Two PhD theses in this field have been published, one of them being a 2011 PhD thesis by Bulten on statutory dispute resolution which is regularly mentioned in various legislation processes. Three PhD projects are in the process of being completed (on inquiry proceedings, conflicts of interests and liability of directors).

In 2012, B.J. de Jong won the triennial PhD Award "Harry Honée Proefschriftprijs" with his 2010 PhD thesis on Liability for Misrepresentation on the Securities Market. He also won a Fulbright-scholarship in 2008. Thirdly, De Jong was awarded a Niels Stensen Fellowship for excellent researchers who have obtained their PhD degree.

4.2 Key Publications (references; full text may be published on secluded website)

1. Asser Series
 - (a) Solinge, G. van, Nieuwe Weme, M.P. & Nowak, R.G.J. (2009). *Rechtspersonenrecht. De naamloze en besloten vennootschap* (Mr. C. Assers' Handleiding tot de beoefening van het Nederlands Burgerlijk Recht, 2-II). Deventer: Kluwer. (LXXIII, 1154 p.)
 - (b) Olffen, M. van (2010). *Asser's Handleiding tot de beoefening van het Nederlands Burgerlijk Recht. Bijzondere Overeenkomsten. Personenvennootschappen* (Asser-serie, 7-VII). Deventer: Kluwer. (XXVII, 355 p.)
 - (c) Rensen, G.J.C. & Blanco Fernández, J.M. (2012). *Asser's Handleiding tot de beoefening van het Nederlands Burgerlijk Recht, 2-III. Rechtspersonenrecht. Overige rechtspersonen, Vereniging, coöperatie, onderlinge waarborgmaatschappij, stichting, kerkgenootschap en Europese rechtsvormen*. Deventer: Kluwer. (LIV, 572 p.)
 - (d) Solinge, G. van, Nieuwe Weme, M.P. & Rensen, G.J.C. (2013). *Asser's Handleiding tot de beoefening van het Nederlands Burgerlijk Recht, 2-IIa. Rechtspersonenrecht. NV en BV. Oprichting, vermogen en aandelen*. Deventer: Kluwer. (LVIII, 504 p.)
2. Davies, P., Hopt, K., Nowak, R.G.J. & Solinge, G. van (2013). *Corporate Boards in Law and Practice. A comparative analysis in Europe*. Oxford: Oxford University Press. (XLVII, 818 p.)
3. Jong, B.J. de (2013). Shareholders' Claims for Reflective Loss. A Comparative Legal Analysis. *European Business Organization Law Review*, 12(1), 97-118.
4. Bulten, C.D.J. (2011). *Over de flexibele aflegging van de sluier. De nieuwe uittreding*. In C.D.J. Bulten (ed), *De nieuwe geschillenregeling* ('Preadvies van de Vereniging 'Handelsrecht') (pp. 1-44). Deventer: Kluwer.
5. Nowak, R. & Van Duuren, T. (2013). *Doorwerking van aandeelhoudersovereenkomsten in het vennootschapsrecht*, In 'Preadviezen privaatrecht 2013', ('Preadvies van de Vereniging voor de vergelijkende studie van het recht van België en Nederland', Boom: Den Haag 2013, (pp. 303-345).

5. Output

Table 2: Main categories of research output 1.1 Company Law (SEP-Table 5.3)

	2008	2009	2010	2011	2012	2013
International refereed articles, books, book chapters	1	0	0	1	1	4
National refereed articles	11	8	10	13	8	8
Non-refereed articles	1	3	4	0	8	4
Monographs, handbooks, proceedings, inaugural lectures and scientific reports	2	2	3	1	3	2
Articles in books/proceedings	10	4	8	11	17	13
PhD-theses	0	1	1	4	0	2
Professional publications	14	11	13	14	17	20
Case notes	22	13	19	13	13	13
Other research output	0	0	0	0	2	2
Total	61	42	58	57	69	68

6. Earning Capacity

Please refer to Part A (Institutional Level), Table 3 on p. 9.

Private funding:

- Allen & Overy
- Enterprise Court (Amsterdam Court of Appeals)
- Eumedion
- Niels Stensen Stichting (Funding fellowship for post-docs)
- Fullbright scholarship

7. Academic Reputation

The academic reputation of the research programme had already been acknowledged by the 2008 Peer Review Committee:

‘Company law remains an excellent programme with a breadth of interests. The scientific impact of the publications is excellent, and the influence and dominance in the field of company law in the Netherlands is without question. The significance of the contribution to the field is outstanding.’⁴³

This assessment was endorsed by the 2013 Peer Review Committee, which rewarded all elements of the research programme with 5 out of 5.

Main examples of key positions and contributions per staff member have been included in Part C, appendix 5.

8. Societal Relevance: Quality, Impact and Valorisation

The combination of fundamental research and the close cooperation with legal practice forms the core and the strength of the Van der Heijden Institute and its research programme. The details of the cooperation appear on the overview of conferences and publications referred to above. Although the implemented publication policy puts emphasis on the academic legal media, members of the Van der Heijden Institute regularly write for quality public media, such as the newspaper *NRC Handelsblad* and the financial newspaper *Het Financieele Dagblad* (Dutch Financial Times). The preparatory phase of legislation plays a vital role in the next stage towards socially relevant debate.

The Van der Heijden Institute is permanently involved in the legislative process, advising the Ministries of Safety and Justice, Finance and Economic Affairs and the Dutch Financial Markets Authority (AFM). One Institute staff member (Prof. G. van Solinge) is a member of the Company Law Committee, a standing advisory committee of the Minister of Safety and Justice.

The majority of the staff members at the Van der Heijden Institute give courses at the CPO, the Grotius Academy (which offers legal specialisation courses), the Law Firm School (which provides professional training for lawyers of the large ‘Zuidas’ law firms) and the Beroepsopleiding Advocaten (national vocational training of lawyers). Their specific expertise in the field of corporate structures, corporate governance and corporate litigation are the reason why the Institute’s researchers are popular teachers in these courses.

Nearly all staff members of the Institute members provide commentaries on important decisions of national and international courts. These comments are published in case law reviews, e.g., *Jurisprudentie Onderneming & Recht* (JOR). JOR is a monthly periodical with an excellent reputation. Prof. C. Bulten has for many years been the key editor of JOR. The influence of these comments on both academia and legal practice cannot be underestimated. Furthermore, the commentaries are often used as study material, not only in the bachelor’s and master’s programmes of the faculty but also in the above-mentioned post-academic legal courses.

9. Viability

Please refer to Part A (Institutional Level) on p. 12.

10. Next Generation

Please refer to Part A (Institutional Level) on p. 13.

11. Self-Analysis according to the SWOT Method

Strengths

The Van der Heijden Institute holds an outstanding and unique position by virtue of the combination of fundamental research and close cooperation with legal practice, comprising both commercial practice and government and by virtue of the close cooperation with the other programmes of the OO&R.

The Van der Heijden Institute is responsible for the editing of five volumes in the field of company law in the highly authoritative *Asser* Series. Four new editions of these volumes were published in the research period

⁴³ *Research Assessment OO&R* 2008, p. 19.

2008-2013. The comments in these handbooks on company law in the *Asser* Series provide significant clarification in legal discussions, legislature and case law.

In its research projects and advisory work the Van der Heijden Institute cooperates on an ongoing basis with legal practice. This orientation fits perfectly into the strategy of the OO&R. Another example are the biannual Van der Heijden Conferences, with speakers from both academia and legal practice. The conferences are always well-attended by and have a first-class reputation among opinion leaders in the field of company law.

The Van der Heijden Institute is one of the research spearheads in Nijmegen. Decades ago, it was decided that the research programme on company law would be a long-term investment for the faculty. As a result, the Van der Heijden Institute is strongly embedded in the research environment of the faculty and the OO&R. This forms a strong continuum. Researchers have their own workplace in the faculty building and enjoy full access to all facilities of the university. Junior researchers attend the highly acclaimed internal training sessions regarding recent developments in legislation and court decisions on a regular basis. None of the PhD-researchers who started their research in the period 2008-2013 have pulled out without completion.

Weaknesses

It is far from easy to obtain external funding from NWO, as is the case at other research units of the OO&R (and all civil law research programmes in the Netherlands).

Although the return on investment for PhD projects is increasing, non-private funding and continuation of PhD projects remain a matter requiring attention.

Opportunities

The research has been given a greater programmatic and fundamental character, following the recommendation of the 2008 Peer Review Committee.⁴⁴ Nevertheless, the Van der Heijden Institute is keeping a close eye on the unmistakable advantage of the thematic nature of its research programme.⁴⁵ With the appointment of a new professor (Bulten) in 2012, who will work full time and with an independent focus on the classical topics embedded in company law, especially the research fields of (i) the functioning of legal entities and their organs and (ii) corporate litigation will receive more attention and substance. The continuous updating of the *Asser* Series and the fundamental treatises on all aspects of company law constitute a programme-wide research project. This enhances cohesion between the four areas of the research programme and its topical subjects. Given its dominant position in the Netherlands, the main challenge for the Van der Heijden Institute will be to further explore comparative law and European law research. As mentioned above, initiating the Forum Europaeum on Corporate Boards in cooperation with Oxford University and the Max Planck Institute Hamburg represents a significant step in that direction. This is an opportunity to initiate more international research. All PhD researchers are strongly encouraged to conduct their research in part at a foreign university or institute with a view to focus on comparative law research and to enlarge their international network.

The following trends in research fit in perfectly with the topics of the research programme.

1. The functioning of legal entities and their organs, points of particular interest:
 - Cooperation with Prof. L.G. Verburg (board of directors, remuneration issues, employee and labour co-determination);
 - The formal aspects of directors' liability;
 - The one-tier board (PhD research).
2. The law relating to groups of companies, points of particular interest:
 - Proposal of the European Parliament for revitalising the EU Company law harmonisation directive on groups of companies;
 - Group-exemption regime, in the particular joint and several liability undertaking ('403-verklaring'); PhD research.
3. The infiltration of financial law into company law, points of particular interest:
 - Future discussions regarding the revision of the law on public companies (*herziening NV-recht*) in cooperation with the Ministry of Safety and Justice;
 - Public bids, in particular the call for revision of the rules for persons acting in concert; PhD research.
4. Corporate litigation, points of particular interest:

⁴⁴ *Research Assessment* 2008, p. 19.

⁴⁵ Which advantage was noticed in the Report of the Ten Kate Committee, Research assessment of law, 1995-2000, Assessment of Research Quality, VSNU 2002.

- Current fundamental discussions on the position of minority shareholders: recent revision of the right of inquiry (*enquêterecht*), future revision of dispute regulation (*geschillenregeling*), influence of the European Convention of Human Rights in the field of company law, with special attention being given to Article 1 of the First Protocol (in cooperation with Prof. C.H. Sieburgh and Prof. J.H. Gerards), squeeze-out proceedings (2014 PhD project);
- New directions in Alternative Dispute Resolution in the field of company law and labour co-determination law.

Threats

As for its close cooperation with legal practice the Van der Heijden Institute has a rather unique position, both nationally as well as internationally. One of its national competitors is the Groningen Institute for Company Law (1984). A new competitor is ZIFO (2010), which bears a remarkably strong resemblance with the structure of OO&R. Although the other research institutes do not form a serious threat (apart perhaps from hiring qualified juniors), the Van der Heijden Institute is keeping a close eye on external developments in this field.

So far, the Van der Heijden Institute has no difficulty in finding qualified staff. The Research Master of the Nijmegen Faculty of Law plays an important role in this regard. Attending the Master's Programme provides the future PhD-student the opportunity to kickstart his PhD research. One Research Master student will finish his dissertation in 2014 (J. Beckers, acting in concert). Another student will start hers at the end of 2014 (C. Deelen, 'Bestuurdersaansprakelijkheid in internationaal perspectief').

12. Strategy

- The Van der Heijden Institute continues on the path it has embarked on since 1966. Given the excellent feed-back over the past years, there is no obvious reason for a radical change. Therefore, the focus remains on fundamental research of company law in the widest sense with a keen eye for legal practice.
- International research projects will be further explored by seeking cooperation with international working groups like the FECB. The expected legislative plans at EU-level will be a source of international research projects. Recently, the Van der Heijden Institute (Prof. B.J. de Jong) together with other OO&R staff members (Prof. P.M. Veder) participated in a newly-formed international working group that will begin a comparative study into shareholders' rights in companies in financial distress. A new PhD project on shareholders' rights (starting date at the end of 2014) is a derivative of this international project.
- The Van der Heijden Institute encourages PhD students to develop their academic and writing skills in the specially developed faculty courses. Furthermore, the Van der Heijden Institute plays a significant role in the Research Master Business & Law by giving an Advanced Master Class on company law topics and organising moot courts. Lastly, the permanent rejuvenation of its staff gives young and talented people every opportunity to improve themselves.

Research Programme 1.2 – Finance, Security Rights and Insolvency Law

1. Objectives and Research Area

Research in the field of Finance, Security Rights and Insolvency Law has traditionally been strongly rooted at the OO&R. As from the launch of the OO&R, research endeavours in this particular field of law were embedded in a separate research programme. The mission of programme 1.2 is to conduct research on fundamental principles, best practices and current legal issues pertaining to Finance, Security Rights and Insolvency Law. In accordance with the general research methodology adopted by the OO&R, the programme includes research from European, comparative and cross-border (i.e. private international law) perspectives.

Programme 1.2 covers two research areas that are closely connected. The research on financing and secured transactions is mainly concerned with analysing the different ways in which a business obtains working capital and the financier is granted different types of proprietary and personal security rights (e.g., research on pledges, mortgages, retention of title, financial collateral arrangements, fiduciary legal concepts, covered bonds/securitisation, leasing, factoring, note programmes, etc.). Research in the field of insolvency law focuses on businesses in financial distress (including recovery and resolution measures and pre-insolvency arrangements).

2. Composition

Table 1: Research Staff 1.2 Insolvency Law (in research fte and absolute) (SEP-Table 5.2)⁴⁶

Table 1a: research fte	2008	2009	2010	2011	2012	2013
Tenured staff	1,26	0,97	1,6	1,89	2	2,57
Non-tenured staff	0,85	0,84	0,73	0,43	0,87	0,88
PhD-students	4,97	4	4,87	2,85	2,29	3,07
Total research staff	7,08	5,81	7,2	5,17	5,16	6,52
Support staff	0,3	0,3	0,3	0,3	0,3	0,3
Total staff	7,38	6,11	7,5	5,47	5,46	6,82

Table 1b: absolute	2008	2009	2010	2011	2012	2013
Tenured staff	9	4	7	9	11	11
Non-tenured staff	3	4	4	3	3	3
PhD-students	6	8	7	4	5	6
Total research staff	18	16	18	16	19	20
Support staff	1	1	1	1	1	1
Total staff	19	17	19	17	20	21

3. Research Environment and Embedding

3.1 National and International Positioning

Programme 1.2 is leading in the Netherlands and no true competition can be said to exist:

‘It is undisputed that this programme of the OO&R is leading in the Netherlands, not having an equivalent or near competitor.’⁴⁷

The Institute of Insolvency Law is still the only academic research centre in the Netherlands with a special focus on insolvency law that has a significant size in terms of research staff.

⁴⁶ Tenured staff: professor, associate professor, assistant professor. Non-tenured staff: researchers, post docs, lecturers.

⁴⁷ *Research Assessment OO&R 2008*, p. 23.

Its international positioning is substantially strengthened by capitalising on structural collaborations with leading experts from academia, the judiciary and legal practice in over 20 countries. This critical mass of expertise available for large-scale and long-term projects yields results which are unique in the research field covered by programme 1.2.

3.2 *Number and Affiliation of Guest Researchers (internally and externally funded)*

During the reporting period, the following guest researchers contributed to activities of programme 1.2 (all were internally funded):

- In 2008, G. Cavalier⁴⁸ followed up on a previous placement as guest researcher within the context of the Improving Human Potential project (funded by the EU) and, during a short second visit to the OO&R, conducted comparative research in the field of insolvency law and legal aspects of the credit crisis.
- In 2011, M. Wiese⁴⁹ conducted comparative research on treatment of liens under South African and Dutch law.
- In 2011-2013, Prof. R. Broude⁵⁰ conducted comparative research in the field of American and cross-border bankruptcy law, he was involved in the Business Law track of the European Master's Programme (insolvency segment) and also delivered professional training programmes for lawyers (hosted by CPO). Each visit lasted for 3 months per year.

4. Quality and Scientific Relevance

4.1 *Most Significant Results/Highlights relevant to the Discipline*

The quality and scientific relevance of research conducted within the context of programme 1.2 are consistently praised in peer review evaluations.⁵¹ In the KNAW Research Assessment 2008, the highest scores were awarded for each of the following quality benchmarks⁵²:

- The approach and ideas
- Significance of the contribution to the field
- Coherence of the programme
- Quality of publications (scientific impact)

These scores were explicitly endorsed by the Mid Term Review Committee for the period 2009-2011.⁵³ The quality and scientific relevance of programme 1.2 are further elaborated in par. 3.1 above and in pars. 7, 8 and 11.1 below.

It is submitted that programme 1.2 has successfully maintained and strengthened the quality of its research endeavours. Important examples of significant results obtained in the reporting period include:

- A major achievement concerns the launch of the *ICIL Series* and the publication of the volumes on *Commencement of Insolvency Proceedings* (2012)⁵⁴ and *Treatment of Contracts in Insolvency* (2013)⁵⁵. The series aims to review existing insolvency laws and practices in major economically developed and emerging countries at a level of detail which is on par with that of leading national text books. Volumes published in the series provide access to materials that were previously only available in a foreign

⁴⁸ Associate Professor of Law (*Maître de conférences*) at University Jean Moulin – Lyon 3.

⁴⁹ Senior Lecturer in Private Law at the University of South Africa.

⁵⁰ Adjunct Professor of Law at the St. John's University and lecturer-in-law at the Columbia Law School.

⁵¹ Cf. e.g., the maximum score for scientific relevance awarded in the most recent peer review evaluation. See *Rapport Evaluatiemissie Onderzoekcentrum Onderneming & Recht* 2013, p. 3.

⁵² *Research Assessment OO&R* 2008, p. 23.

⁵³ See *Rapport Evaluatiemissie Onderzoekcentrum Onderneming & Recht* 2013, p. 3.

⁵⁴ Dennis Faber, Niels Vermunt, Jason Kilborn and Tomáš Richter (eds), *Commencement of Insolvency Proceedings, ICIL Series, Volume 1*, Oxford University Press 2012.

⁵⁵ Dennis Faber, Niels Vermunt, Jason Kilborn and Kathleen van der Linde (eds), *Treatment of Contracts in Insolvency, ICIL Series, Volume 2*, Oxford University Press 2013. The volume complements previous research on the treatment of pre- and post-commencement contracts under (notably) Dutch insolvency law in the book *Overeenkomsten en insolventie*, Series Onderneming en Recht, Volume 72, Kluwer 2012, N.E.D. Faber, J.J. van Hees and N.S.G.J. Vermunt (eds).

language and are a major resource to the international insolvency community on current laws and practices of the participating countries.⁵⁶

- An extensive analysis of all key aspects of the draft Insolvency Bill has been made in a comprehensive volume published by the OO&R⁵⁷. Staff members also assumed a leading position in discussing other suggested changes to promote corporate rescue (e.g., pre-pack arrangements and the pre-insolvency composition schemes). Another significant result is the extensive analysis of the ways in which national laws adopting or reforming debt adjustment systems have evolved in Europe over the past 25 years (also against the background of international principles and best practices).⁵⁸ Research outcome in this field can function as a roadmap and legislative guide to law makers around the world.
- A particular topic of societal relevance engaged by programme 1.2 includes research on combating insolvency fraud. This topic has been structurally embedded in programme 1.2 by establishing a chair in the field of insolvency fraud (currently occupied by Prof. C.M. Hilverda). Important breakthroughs include newly developed tools under the Civil Code, the Bankruptcy Code and the Criminal Code to combat insolvency fraud.⁵⁹ Further dissemination of research outcome has been achieved by, *inter alia*, the involvement of Prof. Hilverda in pending proposals by the Ministry of Security and Justice to amend the current statutory regime (e.g., the prohibition to act as a director, statutory information and cooperation duties of the insolvent debtor and penalising the lack of proper accounting records) and through collaboration with courts and investigative authorities.
- Significant results have also been obtained in the field of Finance and Security Rights. A special theme of research endeavours conducted in collaboration with programme 1.3 covers the assignment of claims (including security assignment and assignment in the context of securitisation and covered bonds transactions).⁶⁰ Other important research outcome in the field of Finance and Security Rights includes the development of new or substantially revised text books (e.g., on credit agreements⁶¹ and pledges⁶²).

4.2 Key Publications

1. ICIL Series

- (a) Dennis Faber, Niels Vermunt, Jason Kilborn and Tomáš Richter (eds), *Commencement of Insolvency Proceedings*, ICIL series, Volume 1, Oxford University Press 2012 (826 pages)
- (b) Dennis Faber, Niels Vermunt, Jason Kilborn and Kathleen van der Linde (eds), *Treatment of Contracts in Insolvency*, ICIL series, Volume 2, Oxford University Press 2013 (578 pages)
2. N.E.D. Faber, C.M. Grundmann-van de Krol, F.E.J. Beekhoven van den Boezem and N.S.G.J. Vermunt (eds), *De Kredietcrisis*, Series Onderneming en Recht, Volume 54, Kluwer 2010 (226 pages)
3. Keijser, T.R.M.P. (2014). *Transnational Securities Law*. Oxford: Oxford University Press 2014 (368 pages)
4. Jason Kilborn and Adrian Walters, 'Involuntary Bankruptcy As Debt Collection: Multi-Jurisdictional Lessons in Choosing the Right Tool for the Job', *American Bankruptcy Law Journal*, 2013, 123-153
5. A. Steneker, Pandrecht, *Monografieën BW*, Volume B12a, Kluwer 2012 (209 pages)

⁵⁶ European countries that currently participate in the project include: Austria, Belgium, the Czech Republic, England, France, Germany, the Netherlands, Poland, Russia, Spain and Sweden. Participating countries from beyond Europe include: the United States of America, Canada, Mexico, Brazil, South Africa, Israel, China, South Korea and Australia.

⁵⁷ N.E.D. Faber, J.J. van Hees, S.C.J.J. Kortmann, N.S.G.J. Vermunt and Ch.A.M. Domingus-Schwencke (eds), *De bewindvoerder, een octopus*, Series Onderneming en Recht, Volume 44, Kluwer 2008. Staff members have also contributed to the book *Het voorontwerp Insolventiewet nader beschouwd*, Ars Aequi Libri 2008, J.A. van de Hel, M.C.A. van den Nieuwenhuijzen and J.H. Verdonschot (eds), and to a special theme issue of the law journal *Ondernemingsrecht*.

⁵⁸ See notably Jason J.J. Kilborn, *Expert recommendations and the evolution of European best practices for the treatment of overindebtedness, 1984-2010*, Series Law of Business and Finance, Volume 11, Kluwer 2011.

⁵⁹ Tools have been developed and analysed in C.M. Hilverda, *Faillissementsfraude*, 3rd edn., Series Onderneming en Recht, Volume 53, Kluwer 2009 and C.M. Hilverda, *De bestrijding van faillissementsfraude* (inaugural lecture Nijmegen), Series Onderneming en Recht, Volume 73, Kluwer 2012.

⁶⁰ See, e.g., J.W.A. Biemans, *Rechtsgevolgen van stille cessie*, Series Onderneming en Recht, Volume 65, Kluwer 2011 and M.H.E. Rongen, *Cessie*, Series Onderneming en Recht, Volume 70, Kluwer 2012.

⁶¹ A.J. Verdaas, *De bancaire kredietovereenkomst*, Ars Aequi Libri 2012.

⁶² A. Steneker, *Pandrecht*, Monografieën BW, Volume B12a, Kluwer 2012. Pledges have also been extensively analysed in the volumes *Bancaire zekerheid*, N.E.D. Faber, H.J. Damkot, N.S.G.J. Vermunt and Ch.A.M. Domingus (eds), Series Onderneming en Recht, Volume 58, Kluwer 2010 and A.J. Verdaas, *Stil pandrecht op vorderingen op naam*, Series Onderneming en Recht, Volume 43, Kluwer 2008.

5. Output

Table 2: Main categories of research output 1.2 Insolvency Law (SEP-Table 5.3)

	2008	2009	2010	2011	2012	2013
International refereed articles, books, book chapters	0	0	3	3	8	6
National refereed articles	3	8	7	10	8	9
Non-refereed articles	0	2	1	1	1	5
Monographs, handbooks, proceedings, inaugural lectures and scientific reports	2	2	2	1	5	1
Articles in books/proceedings	16	8	6	4	8	5
PhD-theses	1	0	0	2	2	0
Professional publications	11	5	5	8	9	14
Case notes	35	10	13	12	31	21
Other research output	0	0	0	1	0	0
Total	68	35	37	42	72	61

6. Earning Capacity

Please refer to Part A (Institutional Level) on p. 9.

The earning capacity of programme 1.2 is significantly impaired by limited access to NWO funding. Nevertheless, a PhD project proposal on pre-pack arrangements (research to be conducted by A. Mennens and supervised by Prof. P.M. Veder and Prof. F.E.J. Beekhoven van den Boezem) has recently been approved by the NWO. Programme 1.2 has succeeded in attracting private funding (e.g., INSOL Europe sponsorship for research conducted within the framework of the *ICIL* Series). Measures have been taken to increase participation in competitive funding of new projects (see par. 11.2 below).

7. Academic Reputation

The strong academic reputation of programme 1.2 is repeatedly endorsed by (international) peer review committees:

‘The Finance, Security Rights and Insolvency Law group is excellent and probably the most outstanding programme within the OO&R.’⁶³

This is also reflected in key positions assumed by staff members at main stakeholders and in advisory functions to policy makers and international GOs/NGOs (see par. 8 below). Main examples of key positions and contributions per staff member have been included in Part C, Appendix 5.

Staff members are regularly invited to address major conferences (e.g., at INSOL International, INSOL Europe and INSOLAD). Furthermore, seminars and conferences organised by staff members of programme 1.2 are traditionally well attended by experts in academia and the legal practice.⁶⁴ Junior members have also been awarded recognition (e.g., through prizes and stipends)⁶⁵ and have visited foreign universities and research centres⁶⁶.

⁶³ *Research Assessment OO&R* 2008, p. 22.

⁶⁴ Examples of conferences and seminars hosted by programme 1.2 include a conference jointly organised with the Dutch Association of Insolvency Practitioners INSOLAD on the draft Insolvency Bill (2008), a conference on main economic and legal aspects of the credit crisis (2010), a conference on proposed changes of the Dutch Bankruptcy Code (2013) and an expert meeting on Insolvency Fraud (2013).

⁶⁵ For example C. Rijckenberg was awarded the 2009 Frye Stipend for talented female researchers to conduct research abroad.

⁶⁶ Guest research was conducted by, for example, B.A. Schuijling (Max Planck Institute for Comparative and International Private Law, Hamburg), V. Tweehuysen (Humboldt University of Berlin and University of Louvain) and R. J. van der Weijden (University of Louvain).

Staff members of programme 1.2 are responsible for editing three series of the OO&R: the Series *Onderneming en Recht*⁶⁷, the Series *Law of Business and Finance*⁶⁸ and the *ICIL Series*⁶⁹. Core members are also responsible for the Finance, Security Rights and Insolvency Law segment of the leading case law review in the field of business law, *JOR*.

8. Societal Relevance: Quality, Impact and Valorisation

The strong societal relevance is arguably one of the main hallmarks of programme 1.2. Research projects traditionally cover topical subjects with high societal relevance (e.g., the financial crisis, foreclosure proceedings and the enforcement of security rights, recognition of schemes of arrangements, the promotion of corporate rescue by pre-pack arrangements and pre-insolvency composition plans, recognition of schemes of arrangements, combating insolvency fraud, bank resolution and recovery and the treatment of consumer debt relief). Practical applications and implementation of knowledge are stimulated by broad dissemination and publication methods (as endorsed by the KNAW Peer Review Committee).⁷⁰ An important example is the structural involvement of staff members of programme 1.2 in publishing commentaries in the leading case law journal in the field of business law (*JOR*). The authoritative status of such case commentaries in legal practice is undisputed. Valorisation of research is also achieved through extensive involvement of staff members in professional legal training programmes (e.g., courses offered by the prestigious Grotius Academy and the CPO). The societal relevance is highlighted further by contributions of researchers in advising policy makers and international GOs/NGOs. Core members of programme 1.2 are regularly involved in preparing and drafting new legislation commissioned by the Dutch Ministry of Safety and Justice and the Ministry of Finance. Attention should be drawn to, for example, the role of Prof. S.C.J.J. Kortmann as chairman and of Prof. P.M. Veder as secretary of the Insolvency State Committee. Another example includes the structural involvement of Prof. C.M. Hilverda and Prof. Veder in respect of pending insolvency law reform regarding insolvency fraud and new rules on pre-packaged arrangements and pre-insolvency composition schemes. N. Vermunt has been involved in discussions with the Dutch Central Bank and the Ministry of Finance regarding new covered bond legislation. Prof. T. Richter and Prof. Veder participated in an expert group established by the European Commission to review the European Insolvency Regulation. An active role was also assumed by members of programme 1.2 in advising foreign legislators. For example, Prof. Richter was involved in Czech insolvency law reform and Prof. J.J. Kilborn contributed to consumer debt relief law reform in Estonia and Hungary. The IMF also commissioned advisory work regarding domestic insolvency laws in several countries across the world (e.g., France, Greece, Portugal and the United Arab Emirates). Prof. Kilborn chairs a drafting group for the World Bank on the treatment of insolvency of natural persons and Prof. Veder is national coordinator of a comparative project on the treatment of shareholders in insolvency proceedings commissioned by the World Bank. Prof. Faber and Vermunt have contributed to meetings of UNCITRAL Working Group V (Insolvency Law) and Working Group VI (Security Interests).

Most senior staff members assume a current position as an attorney-at-law or advisor at a major international or national law firm or financial institution. Other members have been appointed as deputy justice in the judiciary. Several other positions at main stakeholders are assumed by staff members.

Staff members contribute significantly to professional legal education (e.g., Law Firm School for new attorneys, continuing legal education courses and expert training programmes in the field of “Finance and Security Rights” and “Insolvency Law” offered by the prestigious Grotius Academy).

9. Viability

Please refer to Part A (Institutional Level) on p. 12.

10. Next Generation

Please refer to Part A (Institutional Level) on p. 13.

⁶⁷ Edited by Prof. S.C.J.J. Kortmann and Prof. N.E.D. Faber. The series are published by Kluwer.

⁶⁸ Ibid.

⁶⁹ Edited by Prof. N.E.D. Faber and N.S.G.J. Vermunt. The series are published by Oxford University Press.

⁷⁰ *Research Assessment OO&R 2008*, p. 24. See also the maximum score for societal relevance awarded in the *Rapport Evaluatiecommissie Onderzoekcentrum Onderneming & Recht 2013*, p. 3

11. Self-Analysis according to the SWOT Method

Strengths

Programme 1.2 is structurally classified as excellent and is awarded the highest scores in recent evaluation and accreditation procedures (e.g., those of the KNAW and the Mid Term Review committees).⁷¹ In particular, the focus and content of the programme and its long-term viability and feasibility are strong elements of programme 1.2:

‘The scientific impact of the research and publications is excellent, also internationally. (...) Programme 1.2 sparkles with new ideas for coming international and multidisciplinary projects. Considering the extremely strong national and international network of this programme group, through which the actual set of researchers is far greater than on paper, the productivity of the research group and feasibility of the projects is excellent.’⁷²

Particular strengths of programme 1.2 include the continuity of its research focus and its consistent ability to attract leading researchers as staff members. This has enabled programme leaders to structurally embed core topics within the content of the programme and to maintain high quality research outcome. The relationship with legal practice is also a particular key strength of programme 1.2. Structural cross-fertilisation of the academic world and legal practice contributed to fundamental and socially relevant debate. Important examples include joint publications regarding the credit crisis⁷³ and bank security⁷⁴.

Another main strength of programme 1.2 entails its strong international focus and existing collaborations with leading experts from academia, the judiciary and legal practice in over 20 countries. Particular attention should be drawn to research carried out as part of the ICIL series and the appointment of Prof. J. Kilborn (John Marshall Law School, Chicago)⁷⁵ and Prof. T. Richter (Charles University of Prague and Clifford Chance LLP)⁷⁶. Both persons contributed as guest editors of ICIL volumes⁷⁷, delivered inaugural lectures⁷⁸ and published regularly in international legal reviews. Prof. R. Broude (St. John’s University School of Law and Columbia Law School, New York) has been appointed as fellow of the OO&R and is involved in the Master’s Programme in European Law (Business Law track). Prof. Broude is also responsible for contributing as an editor and author to the prominent series *Collier on Bankruptcy* and will be involved in a new volume of the OO&R on *The Collapse of Lehman Brothers* (see below).

Weaknesses

Although measures have been implemented to increase return on investment (e.g., through additional supervision and strict selection criteria regarding viable research proposals and suitable candidates)⁷⁹, NWO funding and timely completion of PhD projects remain a matter requiring specific attention.

⁷¹ Only maximum scores were, for example, awarded in the *Rapport Evaluatiecommissie Onderzoekcentrum Onderneming & Recht* 2013, p. 3.

⁷² *Research Assessment OO&R* 2008, p. 23-24.

⁷³ N.E.D. Faber, C.M. Grundmann-van de Krol, F.E.J. Beekhoven van den Boezem and N.S.G.J. Vermunt (eds), *De Kredietcrisis*, Series Onderneming en Recht, Volume 54, Kluwer 2010 (226 pages).

⁷⁴ N.E.D. Faber, H.J. Damkot, N.S.G.J. Vermunt and Ch.A.M. Domingus (eds), *Bancaire zekerheid*, Series Onderneming en Recht, Volume 58, Kluwer 2010 (369 pages).

⁷⁵ Appointed on 1 September 2010 to the Van der Grinten Chair in International and Comparative Insolvency Law for a time period of two years (extended by the Faculty Board for two additional years).

⁷⁶ Appointed on 1 April 2013 to a visiting chair in Cross-Border Corporate Insolvency Law for a time period of two years.

⁷⁷ See Dennis Faber, Niels Vermunt, Jason Kilborn and Tomáš Richter (eds), *Commencement of Insolvency Proceedings*, ICIL series, Volume 1, Oxford University Press 2012 and Dennis Faber, Niels Vermunt, Jason Kilborn and Kathleen van der Linde (eds), *Treatment of Contracts in Insolvency*, ICIL series, Volume 2, Oxford University Press 2013. Prof. J. Kilborn and Prof. T. Richter will – together with Prof. I. Tirado – serve as guest editors of the 3rd volume of the ICIL series on *Ranking and Categories of Claims*.

⁷⁸ Prof. J. Kilborn delivered his inaugural lecture on 11 December 2009 on the topic *Expert recommendations and the evolution of European best practices for the treatment of overindebtedness 1984-2011* (published as volume 11 in the Series Law of Business and Finance). Prof. T. Richter delivered his inaugural lecture on 4 May 2012 on the topic *Secured transactions law reform in Central Europe against the background of international best practices* (an extended version of the lecture entitled ‘The Uneasy Case for the Priority of Secured Credit: A Minskian Sequel’ has been submitted for publication to an international legal review).

⁷⁹ See further Part A (Institutional Level) above on p. 10.

The earning capacity of programme 1.2 can also be further improved. This particularly applies in relation to competitive funds available on a European level. The OO&R has allocated resources to structurally apply for European funding for new international projects.⁸⁰

Opportunities

The research focus of programme 1.2 has traditionally offered excellent opportunities to make good use of recent developments which have taken place both nationally as well as internationally. In particular the volatility of legal practice (e.g., developments emanating from the financial crisis) and political developments (e.g., the political wish to combat insolvency fraud and to promote corporate rescue beyond formal insolvency proceedings) continue to inspire new research areas. The programme's ability to engage such new fields of research has been explicitly endorsed in the last research assessment of the KNAW.⁸¹

Various large-scale research projects are currently planned in conjunction with partners of the OO&R and members of existing international networks. New projects which are envisaged for the coming years include:

- Set-off, netting and cash pooling
- The role and legal position of alternative credit providers
- Recovery and resolution measures in the EU and beyond
- Security rights in historical comparative perspective
- Security interests in insolvency
- Avoidance provisions and suspect periods
- Pre-pack arrangements and pre-insolvency composition schemes
- The collapse of Lehman Brothers

Research activities on these topics will include expert meetings, seminars and the publication of books/journal articles in Dutch and international legal literature.

Whereas programme 1.2 has succeeded in attracting foreign senior researchers in the past years, new opportunities exist to attract foreign PhD candidates (e.g., within the framework of newly established collaborations between the Radboud University and universities in other EU Member States and beyond).

Threats

A possible threat to programme 1.2 is the challenge of finding experts for international projects (this particularly applies to certain countries beyond Europe). The composition of these networks rely on the availability of leading domestic experts and on their ability to contribute in the English language, and at frequent intervals (e.g., the *ICIL* Series functions as a handbook of participating countries and the continued participation of selected countries is therefore essential). However, if one considers the enhanced international profile of the OO&R and the extensive networks on which it can draw, it is doubtful that this threat will materialise.

12. Strategy

In addition to consolidating existing strategies⁸², the following measures will be taken to further strengthen programme 1.2:

- In line with the OO&R's general strategy and in part drawing on research outcome of international volumes, staff members will be strongly encouraged to increase exposure in international peer reviewed law journals. This can stimulate further debate and facilitate the broad dissemination of research outcome.
- Opportunities to strengthen existing collaborations with the IMF and the World Bank will be explored to support and influence international policy debates.
- Junior researchers will be strongly supported to capitalise on existing international networks and to conduct guest research abroad at foreign research institutions.

⁸⁰ Prof. S. Kortmann will be primarily responsible to address this matter upon his return to the OO&R in September 2014. He will be assisted by P.J. Boon (policy adviser) and staff members who will participate in the proposed projects.

⁸¹ *Research Assessment OO&R* 2008, p. 23.

⁸² The existing strategy, international outlook and stability were collectively awarded the maximum score in the *Rapport Evaluatiecommissie Onderzoekcentrum Onderneming & Recht* 2013, p. 3.

- Structural efforts will be made to increase the earning capacity of programme 1.2 (notably on a European level).

Research Programme 1.3 – Business and Patrimonial Law

1. Objectives and Research Area

Research conducted within the context of programme 1.3 of the OO&R covers the entirety of general patrimonial law. Moreover, it does not only profoundly address all business oriented aspects of Dutch patrimonial law but also explores all European law aspects (effects and interactions) of patrimonial law.

Programme 1.3 forms the basis of research conducted by the other OO&R programmes. Research in this programme is interconnected with the research programmes focusing on Company Law (1.1), Finance, Security Rights and Insolvency Law (1.2) and the research programme devoted to Financial Law (1.4).

The starting point of all OO&R research is furthermore that balanced and practicable research in the field of specific business-oriented legal issues must be firmly anchored in a broad and thorough knowledge of general patrimonial law doctrines and the patrimonial law system. The programme's orientation towards business does not imply that its research is strictly limited to cases about business law practices. Research is constantly being programmed from the insight that general topical issues in patrimonial law may be relevant to or can become of relevance with respect to the business-oriented practice, while a penetrating analysis of the legal aspects in real-life business cases will receive more emphasis when studied in a broader context. The programme managers ensure that the vast majority of research is business-oriented.

Good examples of this approach are the subjects covered by completed PhD research programmes, e.g.: Wolters, *Alle omstandigheden van het geval. Een onderzoek naar de omstandigheden die de werking van de redelijkheid en billijkheid beïnvloeden* (2013), Ernste, *Bindend advies* (2012), Biemans, *Rechtsgevolgen van stille cessie* (2011), Roozendaal, *Werk en privé: de strijd om tijd in het arbeidsovereenkomstenrecht* (2011), Spath, *Zaaksvervanging* (2010), Beversluis, *Enige aspecten van de kwalitatieve verbintenis* (2009), Houdijk, *Publieke belangen in het mededingingsrecht. Een onderzoek in vijf domeinen.* (2009), Van Loon, *Licentieweigering als misbruik van machtspositie. Intellectuele eigendom, artikel 82 EG en de belemmering van innovatie* (2008), and Van der Velden, *Beleggingsfondsen naar burgerlijk recht* (2008).

With reference to the international peer review committee's report,⁸³ the programme managers are convinced that the scope it so fully deserves given the importance and quality of this programme, was exploited to its fullest extent in the reporting period (2008-2013).

Research programme 1.3 covers the following themes:

1. Representation, agency and administration
 - a) Representation and agency
 - b) Trust, segregated patrimony, nominee accounts and their administration
2. Business and property law
 - a) The principles of property law
 - b) Accession, property formation and (spurious) commingling
 - c) Transfer
 - d) Extraordinary property law devices (real subrogation and community of property)
3. Business and the law pertaining to obligations
 - a) General law of obligations
 - b) Contract law (including employment contracts and insurance contracts)
 - c) Liability and tort law
 - d) Extraordinary obligatory devices (set-off, undue payment and unjustified enrichment)
4. European law and Dutch patrimonial law

⁸³ *Research Assessment OO&R* 2008, p. 25 (Overview) and p. 28 (General review).

2. Composition

Table 1: Research Staff 1.3 Patrimonial Law (in research fte and absolute) (SEP-Table 5.2)⁸⁴

<i>Ia: research fte</i>	2008	2009	2010	2011	2012	2013
Tenured staff	3,26	4,07	3,25	3,81	4,17	5,03
Non-tenured staff	4	2,94	3,56	4,13	5,18	5,6
PhD-students	4,46	5,17	6,3	6,56	4,26	4,38
Total research staff	11,72	12,18	13,11	14,5	13,61	15,01
Support staff	0,6	0,6	0,6	0,6	0,6	0,6
Total staff	12,32	12,78	13,71	15,1	14,21	15,61

<i>Ib: absolute</i>	2008	2009	2010	2011	2012	2013
Tenured staff	19	14	13	14	20	20
Non-tenured staff	7	9	12	15	17	19
PhD-students	7	7	9	10	7	6
Total research staff	33	30	34	39	44	45
Support staff	2	2	2	2	2	2
Total staff	35	32	36	41	46	47

3. Research Environment and Embedding

3.1. National and International Positioning

Programme 1.3 is unique in its approach, both nationally as well as internationally, compared to other research programmes in the field of private law. The programme is the centre of expertise for the entire OO&R research (see par. 1 above) and also serves as a centre of excellence both at a national and international level. In the Netherlands, the programme provides for important information and education on the application of patrimonial law at the highest levels of legal practice, for example, in the legal profession and the judiciary, including the Supreme Court.

The programme's profound knowledge of patrimonial law, including the European Law aspects, its flexibility, and the resulting degree of innovativeness have earned international stature. The study of European law as an integral element of current patrimonial law is a relatively new approach which has been adopted by only a few (foreign) research institutes. Moreover, in these few cases, the focus is seldom on general patrimonial law. The international peer review committee is very explicit in its evaluation of this approach:

‘The research covered by programme 1.3 is in all respects excellent. Its outstanding research is fundamental for the whole of the OO&R research, which is overall business oriented.’⁸⁵

The programme's national and international recognition is reflected by the number of requests researchers receive. They receive, for example, invitations to provide preliminary advice, participate in expert meetings and international partnerships and projects, and provide high-quality professional legal education.

Moreover, the enthusiastic cooperation between leading external researchers and programme researchers clearly demonstrates the programme's unique national and international standing and quality. The programme's ranking in the academic community has proven to be a solid basis for starting and maintaining international cooperation projects. Such initiatives for cooperation undertaken by the researchers of programme 1.3 have no difficulty in attracting renowned external researchers. Examples of cooperation are the *Ius Commune* Casebook on the Horizontal Effects of Primary EU law projects, which started in 2011, and the collaboration with the European University Institute (EUI) in Florence on the subject of Primary EU Law and private law concepts. Furthermore, researchers at the OO&R took initiative in 2012 to publish a second completely revised English version of the

⁸⁴ Tenured staff: professor, associate professor, assistant professor. Non-tenured staff: researchers, post docs, lecturers.

⁸⁵ *Research Assessment OO&R* 2008, p. 25.

General Part on *The Influence of EU Law on National Private Law*, with the aim to make the programme's know-how on this topic more accessible to their international colleagues.

In addition to the previously mentioned international initiatives, several PhD researchers and programme researchers have been conducting research abroad (S. van Dongen, Leuven (2009), J.B. Spath in South Africa (2010), I.P.M. Ligteringen at the Max Planck Institute in Hamburg (2011) funded by a Frye stipend, B. Schuijling and S. van Dongen also at the Max Planck Institute (2011), C. Spierings in Oxford (2013), Prof. C.H. Sieburgh at the EUI (2013), V. van Hoof, University of Stellenbosch, South Africa (2013), V. Tweehuysen, C. Spierings, M. Heilbron, and J.E. Jansen, Leuven (2013), P. Wolters, Michigan (2013/2014). B. Schuijling presented a report at the XVIIIth International Congress of Comparative Law, Washington 2010.

3.2. Number and Affiliation of Guest Researchers (internally and externally funded)

Besides the members of the International Working Groups, the OO&R hosted two temporary professors funded by *Tijdschrift voor Privaatrecht*, an authoritative Belgian law journal:

- Prof. S. Scott, University of South Africa, guest professor in 2013
- Prof. B. Demarsin, University of Louvain, guest professor in 2013

4. Quality and Scientific Relevance

Based on its accomplishments as classified by the Research Assessment OO&R 2008, programme 1.3 ranks among the six top research programmes of the Radboud University Nijmegen (2011). The programme enables researchers to identify and exploit new and significant areas of research. In the previous reporting period, this constituted recognising the increasing relevance of European Union law for the current framework of patrimonial law and initiating research in that area. Subsequently, steps were taken to present this uniquely integrated approach to patrimonial law and European law to the international community.

In the current reporting period, this research has been developed further, which resulted in stronger embedding of the principles of European law into the doctrines of patrimonial law. The success of this approach from the very beginning of the programme and consistently recognised ever since is borne out by the fact that in 2008 the academic output of programme 1.3 was described as 'excellent, both nationally and internationally', while the entire programme scored the highest mark (5) on all accounts. C. Timmermans, former judge at the European Court of Justice, recognised the functionality of the programme's approach as well:

'The rich array of private law analyses does not only enrich the development of European law, but it may also contribute significantly to the effective implementation of European law in the national legal systems.'⁸⁶

It is the combination of thorough knowledge of private national law and the confrontation of European law and private national law that led to the research group's renowned position in this field, both nationally as well as internationally. This formed the basis of the 2011 initiative to set up an expert group dedicated to preparing the *Ius Commune* Casebook on Horizontal Effects of Primary EU Law.

Apart from the conferences to which participants in the programme were invited to present their groundbreaking results (see par. 4.1), researchers are also regularly invited to address major conferences. Prof. S.E. Bartels and S. van Dongen participated in the 2010 *Ius Commune* conference in Leuven on the subject of 'cohesive contracts'. Prof. Sieburgh addressed the Maastricht conference 'EU Law in the Private Sphere' (2012) and the EUI Seminar 'The Role of General Principles in the Contemporary Jurisprudence of the CJEU' (2013). In addition to researchers being invited to give presentations, other members of the research group have also received invitations to attend and take part in the discussion.

The OO&R regularly organises symposia in collaboration with its partners about current events that are both academically and socially relevant, such as the seminar about the World Online case chaired by Prof. C.J.H. Jansen.

The publication tradition of programme 1.3 combined with the academic standing of its researchers ensures that the publications are highly relevant to the academic community and legal practice.

⁸⁶ C. Timmermans, SEW 2008, p. 315.

4.1. Most Significant Results/Highlights relevant to the Discipline

- The revision of the Asser Series volumes on patrimonial law and property law (volumes 3-IV and 5 by S.E. Bartels, among others) and the volumes on the law of obligations (volumes 6-I, 6-II, 6-III and 6-IV by A.S. Hartkamp and C.H. Sieburgh) combine essential understanding of patrimonial law doctrines with recent developments in legal practice. In the discussion of patrimonial law (following the structure of the Dutch Civil Code), the relevant European law aspects are discussed as well. Several volumes have been published since 2008: volume 3-IV (*Algemeen goederenrecht*) 2013, 5 (*Eigendom en beperkte rechten*) 2008, 6-II* (*De verbintenis in het algemeen, 2e gedeelte*) 2009, 6-III* (*Algemeen overeenkomstenrecht*) 2010, 6-IV* (*De verbintenis uit de wet*) 2011, 6-I* (*De verbintenis in het algemeen, 1e gedeelte*) 2012, 6-II (*De verbintenis in het algemeen, 2e gedeelte*) 2013. A not-yet-existing Asser volume on substantive Private International Law by A.P.M.J. Vonken was published in 2013: 10-I (*Algemeen deel IPR*). Volume 10-III (*Internationaal Vermogensrecht*) by H.L.E. Verhagen a.o. will follow in 2015.
- In 2008, Hartkamp published a new Asser volume on the interaction between European Law and Private Law: 3-I* (*Europees recht en Nederlands vermogensrecht*). This volume forms the basis of the entire Asser Series and had already been revised and updated in 2011. It was subsequently reworked for an international audience and translated into English: *European Law and National Private Law*, 2012.
- In 2012, Bartels, together with Heyman, published the authoritative monograph *Vastgoedtransacties. Koop*.
- In 2010, Hartkamp delivered a presentation at the fifth European Jurists' Forum, Budapest 2010.
- In 2009, Sieburgh (together with Prof. J.S. Kortmann, University of Amsterdam) provided preliminary advice to the Association for the Comparison of Belgian and Dutch Law, section Private Law, on enforcement of norms through private law remedies.
- In 2010, Hartkamp was invited to deliver the prestigious Ernst Rabel Lecture at the Max Planck Institute for Comparative and International Private Law in Hamburg.
- In 2010, the research group presented a special issue of the *WPNR (Weekblad voor Privaatrecht, Notariaat en Registratie)* about the general principles of European law and private law (with contributions from Hartkamp, Sieburgh, I.V. Aronstein and R.W.E. van Leuken).
- In 2011 I. Aronstein was awarded the G.J. Wiarda price for her published Master's Thesis on *European Law and Open Norms of Private Law*.
- In 2011, Sieburgh provided preliminary advice to the Dutch Lawyers Association regarding the legitimacy of the confrontation of European law and national private law.
- Hartkamp provided preliminary advice that same year in Brussels to the Association for the Comparison of Belgian and Dutch law about the effect of primary European law on private law.
- In 2012, Hartkamp and Sieburgh delivered presentations at the International Conference on General Principles of EU Law and European Private Law of The Swedish Network for European Legal Studies.
- In 2013, Sieburgh organised in collaboration with the Centre for Judicial Cooperation (EUI) a meeting with judges from national courts and the European Court of Justice on 'Judicial Cooperation in European Private Law'.
- In 2013, Jansen published – together with Prof. W.J. Zwolve – *Publiciteit van Jurisprudentie* a volume that appeared in honour of 100 years of publication of Dutch Court decisions (*Nederlandse Jurisprudentie*).
- In 2013, Hartkamp and Sieburgh – together with L.A.D. Keus (Advocate General of the Supreme Court), Prof. Kortmann (University of Amsterdam) and Prof. M. Wissink (Advocate General Supreme Court) – completed the initiative for a second completely revised edition of two Volumes on *The Influence of EU Law on National Private Law* (in print). The contributions in the first Volume (General Part) are all written in English.

4.2. Key Publications (references)

1. Asser Series

- (a) A.S. Hartkamp, *European Law and National Private Law. Effect of EU Law and European Human Rights Law on Legal Relationships between Individuals*. Deventer: Kluwer, 2012. Translation, revision and update of: Asser 3-I* (*Europees recht en Nederlands vermogensrecht*), 2008, 2nd, revised edition 2011
- (b) A.S. Hartkamp & C.H. Sieburgh, Asser 6-II* (*De verbintenis in het algemeen, 2e gedeelte*) 2009, 6-III* (*Algemeen overeenkomstenrecht*) 2010, 6-IV* (*De verbintenis uit de wet*) 2011, 6-I* (*De verbintenis in het algemeen, 1e gedeelte*) 2012, 6-II (*De verbintenis in het algemeen, 2e gedeelte*) 2013

- (c) S.E. Bartels a.o., Asser 3-IV (*Algemeen goederenrecht*) 2013, 5 (*Eigendom en beperkte rechten*) 2008
 (d) A.P.M.J. Vonken, Asser 10-I (*Algemeen deel IPR*) 2013
2. C.H. Sieburgh, *A method to substantively guide the involvement of EU primary law in private law matters*. *European Review of Private Law* 2013, 21(5), 1165-1188
 3. A.S. Hartkamp, *The Concept of (Direct and Indirect) Horizontal Effect of EU Law. The Terminology of European Law Scholars and of Private Law Scholars Compared*, pp. 189-197, C.H. Sieburgh, *General principles and the Charter in Private Law Relationships: Constructive and Critical Input from Private Law*, pp. 233-247, both contributions in: U. Bernitz & X. Groussot (eds), *General Principles of EU Law and European Private Law* (pp. 233-247). The Hague: Kluwer International
 4. Bartels, S.E. (2008). *An Abstract or a Causal System*. In W. Faber & B. Lurger (eds), *Rules for the Transfer of Movables: a Candidate for European Harmonisation or National Reforms? (Schriften zur Europäischen Rechtswissenschaft, 6)* (pp. 59-67) München: Sellier European Law Publishers
 5. Zwolve, W.J. & Jansen, C.J.H. (2013). *Publiciteit van Jurisprudentie*. Deventer: Kluwer. (XX, 495 p., [16 p.]

5. Output

Twelve researchers were awarded a PhD degree in programme 1.3 during the reporting period (2009: two; 2010: two; 2011: three; 2012: two; 2013: three). This reflects the way in which the OO&R has selected and coached PhD researchers in the past few years. It also shows that the enthusiasm among researchers in programme 1.3 and their intensive supervision paid off.

Table 2: Main categories of research output 1.3 Business and Patrimonial Law (SEP-Table 5.3)

	2008	2009	2010	2011	2012	2013
International refereed articles, books, book chapters	6	6	4	6	5	6
National refereed articles	12	14	17	21	16	18
Non-refereed articles	1	2	9	7	1	7
Monographs, handbooks, proceedings, inaugural lectures and scientific reports	6	8	5	6	8	8
Articles in books/proceedings	3	13	8	20	14	15
PhD-theses	2	2	2	3	2	3
Professional publications	19	25	24	32	17	26
Case notes	2	17	20	25	30	28
Other research output	0	0	0	2	2	7
Total	51	87	89	122	95	118

6. Earning Capacity

Please refer to Part A (Institutional Level) on p. 9.

In the previous reporting period, the challenging task of obtaining funding was identified as a possible threat. The current reporting period has shown even more convincingly that it is very difficult indeed to receive NWO funding for fundamental legal research such as conducted within the framework of programme 1.3. A research proposal in the open competition eventually did not make it to the short list, even though two independent reviewers gave it the highest possible rating. With this in mind, the programme managers have decided to focus their attention on other resources. They were successful in attracting contract funding and additional income from direct funding, for example by appointing PhD researchers funded by one of the OO&R's partners and combining a research position with an appointment as a legal practitioner (F.P.C. Strijbos, S. van Dongen and B.A. Schuijling). Hartkamp received funding from 'Stichting Ammodo', a private charitable organisation in the field of Culture and Science, for the *Ius Commune* Casebook on the Horizontal Effects of Primary EU Law. In the near future (starting in 2014) a PhD project incorporated in the research on primary EU law and private law (supervisors Prof. Sieburgh and Prof. W. Devroe (Leuven)) will be funded by the 'rectoren initiatief Leuven Nijmegen'. In 2013, Prof. M. Heemskerk was awarded a grant (one PhD, one Postdoc) by 'Instituut Gak' – a

private funding agency in the field of pensions and labour market policy– for his research project ‘The Role of Pension Funds in Active Ageing and Solidarity between Generations’.

7. Academic Reputation

In line with its status as a centre of excellence in the field of patrimonial law, including the European Law aspects, researchers of the programme have assumed central positions in the editorial boards of authoritative publications in the field of patrimonial law, for example, the Advisory Board of the Asser Series, *Monografieën BW, NTBR, WPNR*. Moreover, they represent fundamental private law research at the Academia Europaea and the KNAW and on the board of NWO-MaGW.

Main examples of key positions and contributions per staff member have been included in Part C, appendix 5.

8. Societal Relevance: Quality, Impact and Valorisation

In 2008, the international peer review committee described it as follows:⁸⁷

‘Considering the stated mission of this programme, the relevance of the research with respect to the advancement, dissemination and implementation of knowledge is excellent. Here, it can be repeated that the research in European private law is fundamental and groundbreaking and deserves to be brought to the attention of the whole of Europe, and that in all research areas of the programme, researchers are in charge of editing the highly authoritative Asser Series volumes.’

The programme’s social commitment is reflected in intensive exchanges between its researchers and the highest levels of legal practice (both lawyers and the judiciary). Moreover, researchers of the programme are members of several governmental commissions (Prof. C.J.M. Klaasen, chair *Vernieuwing Procesrecht*; Prof. S.E. Bartels, evaluation of the Report on Sale). The programme researchers also play a central role in the renowned Grotius programmes for legal professionals and in educational programmes for judges, Courts of Appeal and the Netherlands Supreme Court (Training and Study Centre for the Judiciary, *Stichting Studiecentrum Rechtspleging, SSR*) (see also par. 7). In the field of EU law and private law, programme researchers initiated a new study programme for judges covering both one general and one in-depth course.

Moreover, the Volumes in the Asser Series provide, by virtue of their in-depth elaboration, authoritative, reliable and up-to-date guidance to the legal practice, amongst which the Dutch Supreme Court. A concrete example in this respect is the doctrine of nullity. Following the revision of the Asser volume on Contract Law (6-III*) by Hartkamp and Sieburgh in that direction, the Supreme Court has put into perspective the absolute nullity of cases where, according to the Supreme Court, the legal acts are in breach of the law, public morality or public order in view of their content or purpose. This putting into perspective has direct consequences for the areas where public law regulations (for example, business law, financing and EU law) encroach upon private law relationships.

Publications that focus on the application of legal theory in specific cases and casenotes provide tailor-made guidance while connecting legal theory and legal practice and unlocking the resources provided for by legal research.

9. Viability

Please refer to Part A (Institutional Level) on p. 12.

10. Next Generation

Please refer to Part A (Institutional Level) on p. 13.

⁸⁷ *Research Assessment OO&R* 2008, p. 27.

11. Self-Analysis according to the SWOT Method

Strengths

The strength of OO&R programme 1.3 is that its research covers the entirety of patrimonial law, including the European Law aspects. The programme combines both profound analysis as well as flexibility in the discussion of general patrimonial law doctrines. It provides the necessary basis for the study of complex and specialised topics, especially with regard to the subtleties of patrimonial law which are frequently glossed over by specialists. Programme 1.3 is unique in its approach, both nationally as well as internationally, compared to other research programmes in the field of private law. There is no other research group in the Netherlands that studies patrimonial law in the same breadth and depth and with the same capacity to respond to developments in legal practice and current events, or fundamentally explores EU law as an integral part of patrimonial law. During the reporting period (2008-2013), the programme picked up, integrated and covered upcoming research themes and topical subjects. Many young newly employed researchers published their Master's Theses in authoritative law journals (Ligteringen, *WPNR* (2009), Tweehuysen, *WPNR* (2009), Spierings, *NTBR* (2012), Van de Moosdijk, *WPNR* (2013), and Veldhoen, *WPNR* (2013).

The programme has the financial scope to employ new researchers and, as a centre of expertise, it is able to attract gifted researchers.

The programme has attracted both experienced and junior researchers (originating from the Nijmegen University and other Dutch universities and from the highest levels of legal practice) with an excellent academic record. Both categories of researchers in programme 1.3 are relatively young. The researchers are enthusiastic and inspired and work very hard. Despite their youthfulness, researchers are known to be experts and the programme has a superior status in the field of business-oriented patrimonial law, including the European law aspects. They are aware of the importance of presenting their results to an international audience of researchers, both through publications (also in English) and by delivering presentations to an international audience.

The research group is attractive to young researchers. Initiating and participating in authoritative research projects have given the programme even more academic prestige.

Weaknesses

The strength of programme 1.3 is its broad and fundamental approach to research. In order to prevent this strength from becoming a weakness due to, for example, lack of focus or fragmentation⁸⁸, programme managers should give direction to the research in such a way that there is cohesion between the topics of patrimonial law studied by PhD researchers and the expertise among senior researchers. Their expertise is anchored in the continuous revision of the Asser Series volumes on Books 3, 5 and 6 of the Dutch Civil Code. Key publications deal with topics at the centre of patrimonial law (such as methods of acquiring title, pledge, interpretation, continuing contracts, cohesive contracts, takeover of contracts, enrichment, concurrence of legal grounds, enforcement through private law). Topics that are not at the centre of patrimonial law, such as rental agreements (Book 7 of the Civil Code), are generally not a useable topic for a PhD thesis if they do not have an immediate relevance to business-oriented law. Employment contracts are a topic of interest in the programme because they are relevant in a business setting.

Because its business-oriented character gives the research in programme 1.3 focus and direction, programme managers will maintain this orientation while being aware that this should not restrict the research exclusively to case studies suitable for direct implementation in business-oriented practice. Maintaining a proper balance, as described above, will allow the programme managers to successfully implement sufficient capacity for the research to prosper while at the same time ensuring excellent quality in research within the context of programme 1.3.

Opportunities

Programme 1.3 is renowned both nationally as well as internationally. An essential characteristic of the programme, the investigation and analysis of the fundamental doctrines in positive patrimonial law (including the supranational and international aspects of positive patrimonial law), has earned it an increasingly unique position in this country and abroad. Due to profiling efforts, this key aspect of private law is losing ground as a topic for research at other law faculties. It is against this background that the consolidation of programme 1.3's initial focus has proven to be an important opportunity. Not only is programme 1.3 the basis of all OO&R research, it will continue to be the national knowledge centre in the field of patrimonial law and all its

⁸⁸ As has been brought to the attention of the programme managers by the *Research Assessment OO&R* 2008.

techniques in the future. The available know-how and willingness to pick up signals and implement them in the research makes the programme flexible in responding to developments in society and legal practice.

In the same vein, the position acquired by the research group in the field of European private law provides opportunities in terms of initiating new research projects and picking up new topical subjects for research. There will be upcoming opportunities to take up projects which emphasise the importance of (i) an integrated approach to applicable sources of law and (ii) private law related arguments in international debate on the future development of private law as well as European Law. A starting point for realising these opportunities lies in research on linking hard-core private law arguments to sources of EU law, e.g. general principles of EU law and charter provisions. In 2014, a new PhD researcher was appointed to the programme to work in this particular area of research.

Another opportunity is to set up research projects that 'translate' know-how on the influences of European law and/or public regulations into applicable techniques in national private law. An example of such future research can be found in the overall social situation in relation to the various (European) crises and the applicable regulations to monitor the financial markets, which include legal remedies such as nullity, damages, and private enforcement.

Threats

In the previous reporting period, the challenging task of obtaining funding was identified as a possible threat. The current reporting period has shown even more convincingly that it is very difficult indeed to receive NWO funding for fundamental legal research such as conducted within the framework of programme 1.3. With this in mind, the programme managers have decided to focus their attention on other resources (see Earning Capacity). In its efforts to find excellent young researchers, the programme regularly feels the strong appeal of the legal practice. Nevertheless, by virtue of its excellent exchange programme for Research Master's students supported by the programme researchers and its central position in this specific field of research, the programme has been able to attract gifted researchers. In the future, programme managers will continue to maintain close links between fundamental legal research and educating students with excellent prospects in order to inspire ambitious students and employ them as researchers in the programme.

In a way, the unique position of the programme, both nationally and internationally, may also be interpreted as a threat. For long-lasting success one needs to be exposed to stress factors. Programme management is therefore continuously seeking opportunities to interact with competent sparring-partners and competitors in the academic arena. In the first place, researchers are encouraged to present and defend their analyses at the highest levels of legal practice. In addition, they are encouraged to go abroad and participate in international exchange programmes. Since senior researchers are well embedded in academia and the legal practice, they are able to provide for enough critical mass to move research forward. They are well aware of the fact that this requires a vigilant and proactive approach.

12. Strategy

- Use the evidently successful basic approach of the programme as a frame of reference: the combination of and exchanges between fundamental legal research and business-oriented legal practice.
- Capitalise on the programme's nationally and internationally renowned position as a centre of expertise to define new relevant topics of research emanating from both related research and business-oriented legal practice.
- Capitalise on the programme's nationally and internationally renowned position as a centre of expertise to attract new researchers and external funding. Both through substantive cooperation with researchers from groups with related research interests (e.g., Max Planck Institute Hamburg, KU Leuven, EUI Florence, Oxford) and by boosting its appeal to ambitious students with excellent prospects.
- Be alert to address topical subjects which can be (further) developed and refined by virtue of the programme's approach.
- Continue to create and sustain an ambitious research environment by recruiting and retaining excellent researchers and organising exchange programmes at the highest level for researchers from groups with related research interests.

Research Programme 1.4 – Financial Law (Institute for Financial Law, IFL)

1. Objective and research area

The objective of the Institute for Financial Law (IFL) is to conduct independent research in the field of financial law in a broad sense with an international and interdisciplinary orientation. IFL has close ties with the legal practice and combines practical relevance with academic rigor.

Research at the IFL focuses on both private and public law regulation of the behaviour of actors on the financial markets, including financial supervisors, credit institutions (banks), investment firms, collective investment schemes (investment funds), insurance companies, pension funds and listed companies offering securities. The regulation of the behaviour of actors on the financial markets occurs through the intricate but intriguing concerted action of, *inter alia*, European law, regulatory law, criminal law and private law. The area of regulatory law has become increasingly important in recent years and as of 1 January 2007 it can principally be found in the Financial Supervision Act (*Wet op het financieel toezicht*, Wft). These rules, to a large extent, pertain to administrative law and stem from European law. A breach of these rules can result in sanctions under administrative law that have a punitive character. Therefore, these sanctions are part of (administrative) criminal law. However, breaching these rules may also have consequences under civil law (tort, breach of contract, contractual nullity).

The IFL has strong links with other research programmes at the Business & Law Research Centre. For example, both the volume entitled *Liability of Asset Managers* by Busch/DeMott (OUP 2012) and the collection *Aansprakelijkheid in de financiële sector* by Busch/Klaassen/Arons (Kluwer 2013) have strong links with general liability law, a research area that is part of the Business & Patrimonial Law programme. In the area of listed companies offering securities there are strong links with company law. There is also a clear connection between the framework for bank resolution and the Business & Insolvency Law programme.

2. Composition

Table 1: Research Staff 1.4 Financial law (in research fte and absolute) (SEP-Table 5.2)⁸⁹

<i>1 a: research fte</i>	2008	2009	2010	2011	2012	2013
Tenured staff	0,97	1	1,8	2	1,44	1,35
Non-tenured staff	0,2	0,2	1	1	1	0,93
PhD-students	0	0,75	0,85	1,96	2,03	2,94
Total research staff	1,17	1,95	3,65	4,96	4,47	5,22
Support staff	0,2	0,2	0,2	0,2	0,2	0,2
Total staff	1,37	2,15	3,85	5,16	4,67	5,42

<i>1b: absolute</i>	2008	2009	2010	2011	2012	2013
Tenured staff	5	5	6	6	8	6
Non-tenured staff	1	1	5	6	5	5
PhD-students	0	1	2	3	4	5
Total research staff	6	7	13	15	17	16
Support staff	1	1	1	1	1	1
Total staff	7	8	14	16	18	17

3. Research environment and embedding

3.1 National and international positioning

IFL's close ties with the legal practice combined with academic rigor and its increasingly international and interdisciplinary orientation means that it has established a rather unique position. Often a response to the financial crisis, European financial law is developing at a fast pace. Thus, an international, European and

⁸⁹ Tenured staff: professor, associate professor, assistant professor. Non-tenured staff: researchers, post docs, lecturers.

comparative law perspective has become increasingly important in both financial law theory and practice. In this context, the IFL has been building an international network at a rapid pace, which comprises of leading academics and practitioners in the field of financial law. The IFL is developing this international network principally by means of setting up International Working Groups on important themes of financial law. This approach has contributed substantially to IFL's academic reputation in the international arena. In collaboration with Prof. D.A. DeMott at the Duke University School of Law, U.S.A., IFL has launched an International Working Group (IWG) on Liability of Asset Managers (consisting of 26 leading academics and practicing lawyers in the field of financial law) in 2010.⁹⁰ The IWG focused on the interplay between private and public law in the context of asset management. In 2011, it launched an IWG on Alternative Investment Funds in Europe in collaboration with Prof. L.D. van Setten at Morgan Stanley Investment Management and King's College London.⁹¹ The IWG resulted in a thorough and critical evaluation of the highly controversial Alternative Investment Fund Managers Directive (AIFMD), and it has also analysed the impact of the AIFMD on the investment management landscape in several key Member States. In 2013, it launched an IWG on the European Banking Union in collaboration with Prof. G. Ferrarini of the Genoa Centre for Law and Finance at the University of Genoa, Italy.⁹² The aim of the IWG is to critically assess several important aspects of the European Banking Union, notably the Single Supervisory Mechanism (SSM), the Single Resolution Mechanism (SRM) and the Single Rule Book.

3.2 Interdisciplinary orientation

As far as the interdisciplinary perspectives of IFL's research are concerned, IFL has sought collaboration with economists from the Network for Studies on Pensions, Aging and Retirement (Netspar) in the field of pension fund regulation. Furthermore, in 2012, IFL has sought collaboration with the Chair for Corporate Finance of the Management Faculty at Radboud University Nijmegen in analysing European financial law from the perspective of behavioural economics (Transparency Directive, Market Abuse Directive, Markets in Financial Instruments Directive).

3.3 Number and affiliation of guest researchers (internally and externally funded)

In the last few years, IFL has had four guest researchers from the legal practice industry (termed IFL Fellows) who conduct research in the field of financial law (Pijpers (ING, until 2013), Van den Hurk (AEGON), Van der Velden (attorney-at-law Nijmegen) and Frielink (attorney-at-law Curaçao)).

4. Quality and scientific relevance

IFL combines academic rigor with a systematic and practical approach to analyse the relatively new research area of financial law. It has done so primarily through the publication of a series of handbooks on important aspects of financial law in a broad sense: (1) general regulatory law (second ed. 2010), (2) market abuse (second ed. 2008), (3) investment firms (2009), (4) pension funds (2011), (5) initial public offerings (2011), (6) sanction law (2013), (7) liability in the financial sector (2014), and (8) asset management (2012 and 2014).⁹³ The IFL is unique in taking this approach. All these handbooks are first in their kind and state of the art. They have a guiding function in both academic research and legal practice (law firms, judges, lawmakers). The fact that IFL regularly organises know-how meetings in collaboration with its partners from the legal practice at the Business & Law Research Centre, guarantees that the practical relevance of IFL's research is tested on a regular basis. This also ensures that research at the IFL reaches and influences the legal practice. For example, Busch has argued in a series of publications that the awareness among judges and practitioners concerning issues surrounding the impact of (European) regulatory law on private law should grow, resulting in their explicit

⁹⁰ D. Busch/D.A. DeMott (eds), *Liability of Asset Managers* (Oxford University Press 2012).

⁹¹ D. Busch/L.D. van Setten (eds), *Alternative Investment Funds in Europe* (Oxford University Press 2014).

⁹² D. Busch /G. Ferrarini (eds), *The European Banking Union* (to be published by Oxford University Press 2015).

⁹³ See (1) Busch/D.R. Doorenbos/Grundmann-van de Krol/R.H. Maatman/M.P. Nieuwe Weme/W.A.K. Rank, *Onderneming en financieel toezicht* (2nd Ed. 2010); (2) D.R. Doorenbos/S.C.J.J. Kortmann/M.P. Nieuwe Weme, *Handboek Marktmisbruik* (2nd Ed. 2008); (3) D. Busch/C.M. Grundmann-van de Krol, *Handboek Beleggingsondernemingen* (2009); (4) R.H. Maatman/R.M.M.J. Bauer/D. Busch/L.G. Verburg, *Onderneming en pensioen* (2011); (5) B. Bierens/Grundmann-van de Krol/D.J.R. Lemstra/T.M. Stevens, *Handboek Beursgang* (2011); (6) D.R. Doorenbos/M.J.C. Somsen, *Onderneming en sanctierecht* (2013); (7) D. Busch/C.J.M. Klaassen/T.M.C. Arons, *Aansprakelijkheid in de financiële sector* (2013); (8) D.R. Doorenbos/M.J.C. Somsen, *Onderneming en sanctierecht* (2013); D. Busch/D.A. DeMott (eds), *Liability of Asset Managers* (Oxford University Press 2012); D. Busch, *Monografie BW Vermogensbeheer* (2014).

litigation before national courts.⁹⁴ Recently, a leading Dutch Supreme Court litigator has indeed made explicit arguments along these lines in the Fortis case, while quoting from a publication by Busch.⁹⁵ Also, a recent decision by the Court of Appeal Den Bosch clearly follows the suggestions of Busch and explicitly addresses several questions about the influence of (European) regulatory law on private law.⁹⁶

IFL's collaboration with economists from the Network for Studies on Pensions, Aging and Retirement (Netspar) in the field of pension fund regulation is also notable. In 2011, this collaboration resulted in the publication of the well-received volume *Onderneming en Pensioen*, which contains contributions from both academic and practicing lawyers and economists.. The volume has been edited by Maatman (IFL), Busch (IFL), Verburg (Labour Law Chair, Radboud University Nijmegen) and Bauer (Institutional Investors Chair, Maastricht University). In 2013, M. Heemskerck (Pension Law Chair, Radboud University Nijmegen), Maatman and B.J. de Jong (both IFL, the latter also VHI) published a Netspar paper on the civil law essentials of the revision of the Dutch pension system. Maatman contributed to the Cambridge University Press Fiduciary Handbook in 2013 by writing a chapter called 'The Dutch Pension System'.

The high quality and scientific relevance of the research projects at IFL is also evidenced by the fact that many of its results are published through reputable publishing houses such as Oxford University Press and Kluwer. The OUP volume *Liability of Asset Managers* was well-received in academia. The leading financial law scholar Professor Niamh Moloney at LSE wrote a favourable book review in the renowned *Capital Markets Law Journal* published by OUP (referring to the volume as 'timely' and an 'important contribution' to financial law).⁹⁷ Furthermore, the academic papers written by IFL researchers are often published in reputable law reviews such as the *Capital Markets Law Journal*, *NTBR*, *Ondernemingsrecht* and *Tijdschrift voor Financieel Recht*. Their scientific relevance is evidenced by the fact that IFL publications are often referred to by other academics in the field. The 2012 Mid Term Review Committee qualifies IFL's research output as 'excellent'.

4.1 Highlights

- Setting up of the IWG on Alternative Investment Fund Managers Directive (AIFMD) in 2011, together with Prof. L.D. van Setten of Morgan Stanley Investment Management and King's College London, which resulted in the publication of *Alternative Investment Funds in Europe*, D. Busch/L.D. van Setten (eds) (Oxford University Press 2014).
- Publication and well-visited book launch in April 2012 of *Liability of Asset Managers*, D. Busch/D.A. DeMott (eds) (Oxford University Press 2012).
- Prof. Busch conducted research at the Genoa Centre for Law and Finance, University of Genoa, Italy, from May to July 2013, which resulted in the setting up of the IWG on the European Banking Union in collaboration with Prof. Ferrarini of the Genoa Centre for Law and Finance, University of Genoa, Italy (results to be published by Oxford University Press in 2015);
- Publication and well-visited book launch in September 2013 of *Aansprakelijkheid in de financiële sector*, D. Busch/C.J.M. Klaassen/T.M.C. Arons (Kluwer 2013).
- In 2013, Prof. C.C. van Dam and Prof. Busch set up a comparative law project entitled *A Bank's Duty of Care* (results to be published by Hart Publishers in 2015).
- Inaugural lectures of Prof. Grundmann-van de Krol (2010), Prof. Busch (2011) and Prof. De Serière (2011).⁹⁸
- Annual IFL conferences (2011, 2012, 2013, 2014), well-visited and highly regarded in both academia and the legal practice.

⁹⁴ See for example D. Busch, Het 'civiel effect' van MiFID: Europese invloed op aansprakelijkheid van vermogensbeheerders, *Ondernemingsrecht* (2012), p. 67-78.

⁹⁵ Dutch Supreme Court 6 December 2013, *RvdW* 2014, 1 (*Ageas NV – voorheen Fortis N.V. / VEB c.s.*). The decision is discussed by Busch in the Belgian law review *Droit bancaire et financier/Bank- en Financieel Recht* 2013/V, p. 301-313.

⁹⁶ Court of Appeal Den Bosch 15 April 2014, ECLI:NL:GHSHE:2014:1052 (*Holding Westkant B.V. in liquidatie v. ABN AMRO Bank N.V.*).

⁹⁷ Niamh Moloney, Liability of asset managers: a comment, *CMLJ* (2012), p. 414-422. See p. 414 and 415 for the quotes.

⁹⁸ C.M. Grundmann-van de Krol: *Koersen in de mist: op weg naar transparante wetgeving?* Delivered on 28 May 2010 and published with Boom Juridische uitgevers, The Hague (90 pages); D. Busch, *Naar een beperkte aansprakelijkheid van financiële toezichthouders?* Delivered on 26 January 2011 and published as Volume 61 in the Serie *Onderneming en Recht*, Deventer: Kluwer 2011 (104 pages); V.P.G. de Serière: *Als de stille noodklok luidt... Overheidsingrijpen in privaatrechtelijke verhoudingen ten behoeve van de stabiliteit in de financiële sector* Delivered on 30 November 2011 and published as Volume 71 in the Serie *Onderneming en Recht*, Deventer: Kluwer 2012 (100 pages).

4.2 Key publications

1. Busch, D. & Grundmann-van de Krol, C.M. (2009). *Handboek beleggingsondernemingen* (Serie Onderneming en Recht, 51). Deventer: Kluwer. (1150 p.)
2. Maatman, R.H., Bauer, R.M.M.J., Busch, D. & Verburg, L.G. (2011). *Onderneming en pensioen* (Serie onderneming en recht, 64). Deventer: Kluwer. (XXIX, 716 p.)
3. Busch, D. & DeMott, D.A. (Eds.). (2012). *Liability of Asset Managers*. Oxford: Oxford University Press. (LIV, 564 p.)
4. Busch, D. (2012). Why MiFID Matters to Private Law. The Example of MiFID's Impact on an Asset Manager's Civil Liability. *Capital Markets Law Journal*, 7(4), 386-413
5. Busch, D., Klaassen, C.J.M. & Arons, T.M.C. (2013). *Aansprakelijkheid in de financiële sector* (Serie onderneming en recht, 78). Deventer: Kluwer. (XLI, 1179 p.)

5. Output

Table 2: Main categories of research output 1.4 Financial Law (SEP-Table 5.3)

	2008	2009	2010	2011	2012	2013
International refereed articles, books, book chapters	1	1	1	0	7	4
National refereed articles	7	11	19	16	19	6
Non-refereed articles	1	1	6	2	2	1
Monographs, handbooks, proceedings, inaugural lectures and scientific reports	0	1	5	1	3	5
Articles in books/proceedings	5	6	13	9	11	15
PhD-theses	0	0	0	0	0	0
Professional publications	7	4	12	18	17	23
Case notes	3	8	12	8	13	15
Other research output	0	1	1	0	1	1
Total	24	33	69	54	73	70

6. Earning capacity

Please refer to Part A (Institutional Level) on p. 9.

Rabobank Nederland has recently made available funds for a PhD position. The research conducted on behalf of Netspar has also received funding. ING has made funding available to support a PhD position (2008). As is the case with other research units of the OO&R (and all law faculties in the Netherlands), it is far from easy to obtain external funding from NWO.

7. Academic reputation

The academic standing and reputation of IFL is primarily defined by the academic reputation of its researchers. Key researchers are Prof. Busch, Prof. Grundmann-van de Krol and Prof. De Serière. Prof. W.A.K. Rank left for a position at Leiden University (2012).

Main examples of key positions and contributions per staff member have been included in appendix 5.

8. Societal relevance: Quality, Impact and Valorisation

Researchers at the IFL (Busch, Grundmann-van de Krol, De Serière) are consulted on a regular basis and advise the Ministry of Finance, the Court of Audit (*Algemene Rekenkamer*), as well as courts and law firms on aspects of financial law legislation. IFL researchers regularly provide commentary on important court decisions (Busch, Grundmann-van de Krol, De Serière and others). IFL researchers (Busch, Grundmann-van de Krol) are also

engaged in legal training of attorneys-at-law and financial professionals. Furthermore, IFL researchers (Busch, Doorenbos) are regularly invited by the media to comment on important events in the financial sector such as the nationalisation of the Dutch bank-insurer SNS REAAL. IFL professors (Busch, Grundmann-van de Krol) are regularly invited to sit on PhD committees at other universities in the Netherlands and on advisory committees in relation to the appointment of financial law professors at other Dutch universities. In addition, Busch was a member of the Consultative Working Group (CWG) from 2010-2012, while assisting the Investor Protection and Intermediaries Standing Committee (IPISC) of the European Securities and Markets Authority (ESMA) which advised on aspects of the revision of the Markets in Financial Instruments Directive (MiFID II). The IFL regularly organises conferences to present the results of current research (see § 4.1). These conferences are well-visited by both practicing lawyers and academics and are given positive evaluation. The speakers at such conferences often comprise a mixture of academic and practicing lawyers and economists.

9. Viability

Please refer to Part A (Institutional Level) on p. 12.

10. Next Generation

Please refer to Part A (Institutional Level) on p. 13.

11. Self-Analysis according to the SWOT Method

Strengths

- Publication of groundbreaking comparative law research on the interplay between private and public law in the field of asset management by Oxford University Press.⁹⁹
- Excellent ties with Oxford University Press. Apart from the *Liability of Asset Managers* volume, it has published *Alternative Investment Funds in Europe – Law & Practice* (Busch/Van Setten) in 2014.¹⁰⁰ In 2015, *The European Banking Union* (Busch/Ferrarini), will be published by Oxford University Press.
- Excellent national and international network in the world of financial law, both in academia and the legal practice.
- Publication of first in their kind and state of the art handbooks on important aspects of financial law in a broad sense.¹⁰¹
- Interdisciplinary orientation through collaboration with economists, both from Netspar and the Chair for Corporate Finance of the Management Faculty at Radboud University Nijmegen.
- Its close links with the legal practice enables IFL to generate research output of great practical relevance, while not making any concessions in terms of academic rigor. In addition, the model ensures a large research output with a relatively modest fulltime research staff.
- Rabobank Nederland recently funded a PhD position. Also the research currently conducted on behalf of Netspar has received funding.
- The IFL offers a masters specialisation in financial law, which enables it to scout for talented PhD candidates in financial law.

Weaknesses

- It appears to be difficult to obtain NWO funding (indirect government funding), like most of the private law research programmes. Funding and the continuation of PhD projects remain issues that merit attention.

⁹⁹ D. Busch/D.A. DeMott (eds), *Liability of Asset Managers* (Oxford University Press 2012).

¹⁰⁰ D. Busch/L.D. van Setten, *Alternative Investment Funds in Europe* (Oxford University Press 2014)

¹⁰¹ See (1) D. Busch/C.M. Grundmann-van de Krol, *Handboek Beleggingsondernemingen* (2009); (2) Busch/D.R. Doorenbos/Grundmann-van de Krol/R.H. Maatman/M.P. Nieuwe Weme/W.A.K. Rank, *Onderneming en financieel toezicht* (2nd Ed. 2010); (3) R.H. Maatman/R.M.M.J. Bauer/D. Busch/L.G. Verburg, *Onderneming en pensioen* (2011); (4) B. Bierens/Grundmann-van de Krol/D.J.R. Lemstra/T.M. Stevens, *Handboek Beursgang* (2011); (5) D. Busch/C.J.M. Klaassen/T.M.C. Arons, *Aansprakelijkheid in de financiële sector* (2013); (6) D.R. Doorenbos/M.J.C. Somsen, *Onderneming en sanctierecht* (2013).

Opportunities

- As already mentioned above (see § 3.1), often as a response to the financial crisis, European financial law is developing at a fast pace. In this context, international, European and comparative law perspectives have become increasingly important in both financial law theory and practice. This is already reflected in past, current and future research (see § 3.1) but should be further developed and intensified in the near future.
- The collaboration with Netspar as well as the collaboration with the Chair for Corporate Finance of the Management Faculty at Radboud University Nijmegen provide good opportunities to strengthen the interdisciplinary aspect of IFL's research programme (see § 3.1).
- Some of IFL's key researchers already publish in English on a regular basis, but quite a few researchers participating in IFL research have not yet published anything in English. They should be encouraged to do so.

Threats

- Attracting qualified staff must remain an important focal point.
- The successful collaboration with the legal practice has been copied by ZIFO (*Zuidas Instituut voor Financieel en Ondernemingsrecht*, 2010) at VU University Amsterdam. So far, this has not affected IFL's leading position.

12. Strategy

- Strengthen and further develop IFL's national and international network in both academia and the legal practice.
- Increase the number of PhD positions in financial law so as to obtain more critical mass.