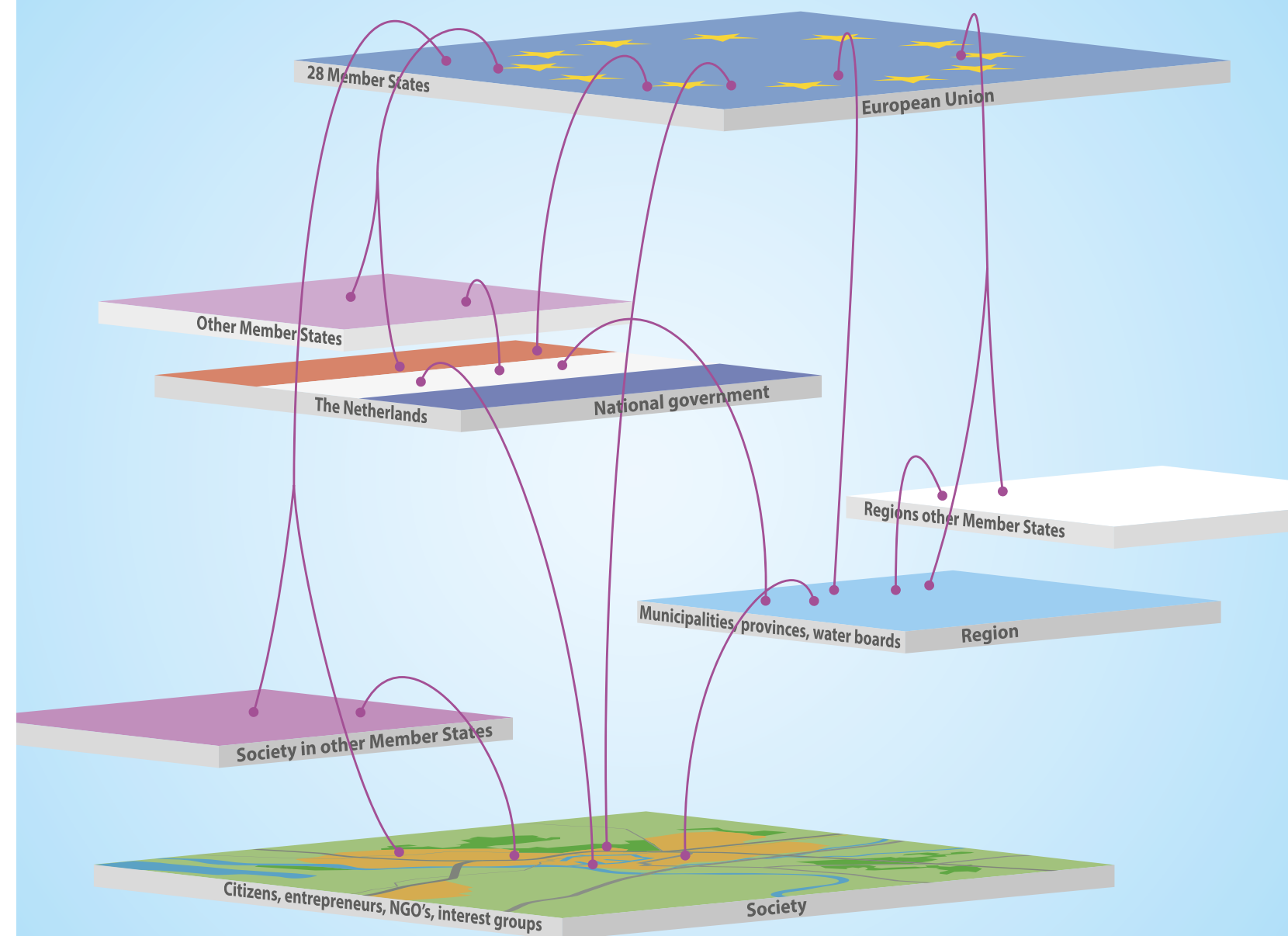


ROOM FOR THE REGIONS IN EUROPEAN POLICY

SEPTEMBER 2015



About the Council for the Environment and Infrastructure

The Council for the Environment and Infrastructure (Raad voor de Leefomgeving en Infrastructuur, Rli) advises the Dutch government and Parliament on strategic issues concerning the sustainable development of the living and working environment. The Council is independent, and offers solicited and unsolicited advice on long-term issues of strategic importance to the Netherlands. Through its integrated approach and strategic advice, the Council strives to provide greater depth and breadth to the political and social debate, and to improve the quality of decision-making processes.

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PART 1 | ADVISORY REPORT

EUROPEAN INFLUENCES
IN OUR ENVIRONMENT:
ADDED VALUE AND
TENSIONS



1.1 Europe and our daily environment

European influence impacts the region

Government authorities at various levels develop and carry out policies that affect the physical environment: at the European (EU) level, national, regional and local levels. Over the past few decades, the influence of the EU on policy affecting the physical environment has grown considerably.¹ More than ever, this policy is being carried out by provinces, water boards and municipalities (Beunen et al., 2009; Evers & Tennekes, 2014; Mastenbroek et al., 2013). The consequences of these developments are becoming increasingly tangible for society, individuals and businesses. Legislation can create or even diminish opportunities, either directly or indirectly.

Environmental benefits of European influence

Individuals have benefitted and continue to benefit from European environmental legislation, especially when problems transcend national borders. Since policy objectives are binding throughout the entire EU, this has created a level playing field between Member States in many different areas. Pollution in European rivers has been effectively tackled and the effects of floods are, thanks to European law, no longer passed on downstream to the Dutch delta. Vast improvements have been made to air

¹ Examples include the Birds and Habitats Directives, the Water Framework Directive, the Nitrates Directive and the Air Quality Directive. The deregulation of public transport also has an impact: people are confronted with multiple operators and new transport concepts such as neighbourhood buses and regional taxis. European Structural Funds and Rural Development policy trigger investments in the region and contribute to mutual learning between regions.

quality and a high level of food safety has been achieved. Birds protected in the Netherlands may no longer be hunted in other European countries and a cross-border nature conservation policy has been developed in which the same rules apply equally in all Member States. Throughout the EU, businesses must comply with the same environmental standards for their products and production processes. Finally, European interregional cooperation programmes (e.g. European Innovation Partnerships and Interreg) finance a multitude of projects aimed at mutual learning and bolstering economic, social and territorial cohesion throughout the EU.

'Europe' viewed as an obstacle

For a long time, the importance of 'Europe' was self-evident in the Netherlands. For many, however, this is no longer the case. As far as environmental policy is concerned, public officials regularly give people the impression that 'Europe' constrains development opportunities. This sentiment is intensified by a more general aversion to the European Union.

The argument that 'Europe' constrains development opportunities in the Netherlands glosses over the increased complexity of relationships between the European Union, the national government, regional and local authorities and other parties. The various players appear to have different ideas and perceptions about the degree to which Europe is a constraint. In the political debate, a false dichotomy is regularly created between 'The Hague' and 'Brussels' (see Section 2.4).

Tensions between EU policies and regional issues

The Rli has found that tensions can arise regarding objectives and policies established at higher administrative levels. Policy challenges look different from a European perspective than at the regional level. Provinces, water boards and municipalities make local decisions on issues such as accessibility, housing, economic competitiveness and nature. They combine different policy challenges and balance one consideration against the other. Decisions made at the regional level resulting from choices made at the European level have tangible effects and sometimes create problems for individuals, for example when commuters are inconvenienced by construction work on railway platforms to comply with EU regulations on universal accessibility, or when farms and businesses near Natura 2000 sites are unable to expand their activities because of the protection regime. The confluence of policy challenges at the regional level can clash with the more conceptual and sectoral perspective taken at the EU and national level. The mismatch can be explained, but it also creates misunderstanding. Individuals and businesses feel hampered by 'Europe' and regional and local authorities feel they have been given insufficient room for decision-making.

Recent steps towards more transparent and accessible policy

Over the past year, the tensions felt by Member States regarding European regulations have been squarely put on the agenda. In May 2015, the Juncker Commission presented its Better Regulation Agenda to make the European policymaking process more transparent and accessible and arrive at better and more effective regulation (European Commission,

2015a. At the same time, the national government is exploring, together with regional and local authorities, how the latter can become more involved in EU policymaking, especially in view of the changing roles and positions resulting from policy decentralisation.

Prompted by the Environment and Planning Act, the Ministry of Infrastructure and the Environment has taken the initiative, together with the United Kingdom and Germany, to make European environmental policy better, more consistent and easier to implement. This resulted in the Make it Work project.

The passing of the Environment and Planning Act by the House of Representatives constitutes a major step towards an integrated approach to environmental legislation. The aim is to enhance decision-making discretion and flexibility at the local and regional level (see Part 2, Chapter 2). This is only considered possible if European rules allow for this.

1.2 Request for advice

This advisory report investigates the tension between policy and legislation made at the European level and the implementation of environmental and planning policy at the regional level. The following questions guided the study:

- What difficulties and conflicts are found at the regional level as a result of environmental legislation and to what extent can they be attributed to European policy?



- What creates tension between different tiers of government?
- What can the different government authorities and other stakeholders do in the European policymaking process to reduce these tensions?

In order to gain insight into this complex process – from getting issues on the European agenda to local implementation – Rli carried out a literature study, conducted interviews, held workshops and analysed examples of environmental and infrastructure policies. The case studies, which are presented in Part 2, provide insight into how the political process occurs in practice, where friction arises (from the preparatory stage of EU laws and regulations up to their implementation) and where innovative solutions were discovered. The cases usually cover a long period of time: the process from policy initiative to implementation can take decades. That means that past procedures and processes should be seen in their historical context: even if much has been learned since, experiences have led to major or minor policy adjustments or changes have occurred in the way that new policy is developed and carried out. The case study analyses are primarily intended to discover where conflicts arise and what has been, or could be, learned from them. The case studies also highlight differences between policy areas.

1.3 Tensions and their alleviation

A number of reoccurring factors seem to contribute to the above-mentioned tension between policymaking at the European level and implementation in practice. Many years can go by before regional parties become aware of the consequences of European policy. The stages of decision-making in which they had (or could have had) some influence are long gone.

The Netherlands has yet to develop an effective and unified strategy for the early stage of European decision-making that takes into account the expected impacts of transposition into national legislation. Dutch advisory councils (e.g. WRR, AIV, RMO and ROB) have already made this point in various studies (see Appendix on Advisory Councils regarding European policy). The recent report by the Ministry of Interior Affairs and Kingdom Relations (BZK) about how subnational authorities can be better involved in the creation and transposition of European legislation comes to the same conclusion.

The increased administrative complexity in the area of environmental policy has heightened the tension: as the influence of European legislation on the environment grows, more and more tasks are being decentralised in the Netherlands. Although many parties are involved in European decision-making, it is the national government, as the Member State representative, which is the formal bargaining partner in the European Union.

Legislation in the area of the physical environment emerges within a complex arena encompassing multiple administrative levels. The European Union, the national government, the Dutch provinces, water boards and municipalities all have their own role to play, and this role changes according to the stage of decision-making and the policy area concerned. Non-governmental parties are also active in this arena. In order to exert influence in this complex arena, tactical skills and clear agreements between parties are indispensable, although practice has shown that it is difficult to actually carry through on such agreements (De Lange et al., 2015).



Governance principles within this arena are not necessarily compatible: regulation and standards exist alongside softer means like agreements and stimulation packages; sectoral silo policy exists alongside place-based assessments and balancing and trade-offs between policy objectives. This diversity can undermine support for legislation and create tensions regarding implementation.

The picture painted of 'Europe' in general, and the implementation of environmental policy in particular, contributes to the tensions identified above. Whenever problems arise in the domain of the environment, fact and fiction about the role of the European Union quite often become blurred.

These tensions will be discussed in more detail in Chapter 2.

Advice and suggestions

The analysis of the Rli has found that the parties involved in this policy area are already familiar with the causes of the tensions. The European Commission and other European institutions, the national government and regional and local authorities are all actively looking for new means of collaboration and control. This has given rise to initiatives such as the Better Regulation Agenda, new agreements between the national government, provinces, municipalities and water boards and more proactive participation of subnational authorities and non-governmental parties in Europe (European Commission, 2015a, De Lange et al., 2015, Ministerie van BZK, 2015). Nevertheless, the Rli feels that there is still a lot

of room for improvement in how new and existing procedures, agreements and governance principles are applied in practice.

The Rli recommends improving coordination and exchange between governmental levels, which in turn will improve communication between European policy development and implementation. In brief, the Rli makes the following suggestions for the national government, subnational authorities and the wider community:

1. Act strategically during the preparatory stage

The agenda-setting or preparatory stage is crucial for influencing the European legislative process. This stage offers many opportunities, but does demand strategic input and insight into the likely consequences for practice at the regional level. Only if sufficient attention is paid to the divergent values, contrasting aims and conflicting interests can joint action by different tiers of government be successful.

2. Stimulate collaboration between national and subnational authorities and the public

The consequences of contrasting policy aims in a particular area become tangible at the regional level. Active involvement of subnational authorities and smart collaboration between all governmental levels is vital for an environmental policy that benefits people. The many good intentions in this area need to be put into practice more convincingly. This requires being open to learning and cutting through organisational routines.



3. Put other governance principles than regulation on the agenda

The agenda-setting and preparatory stage is the perfect time to raise the issue of governance and policy tools. Calling attention to positive experiences with other instruments than regulations at the European level will open up opportunities to create a better match between EU policy and regional policy practice.

4. Acknowledge diversity between regions and promote flexibility for local interpretation at an early stage

Regional differences underline the necessity of local solutions during implementation. There are ways to ensure such flexibility during the preparation of European legislation and in its transposition, but these opportunities need to be seen and seized.

5. View borders as European linkages

Border regions encounter specific issues and interests in environmental matters. National policy and legislation often falls short in this regard. European legislation offers opportunities to tackle these issues more effectively.

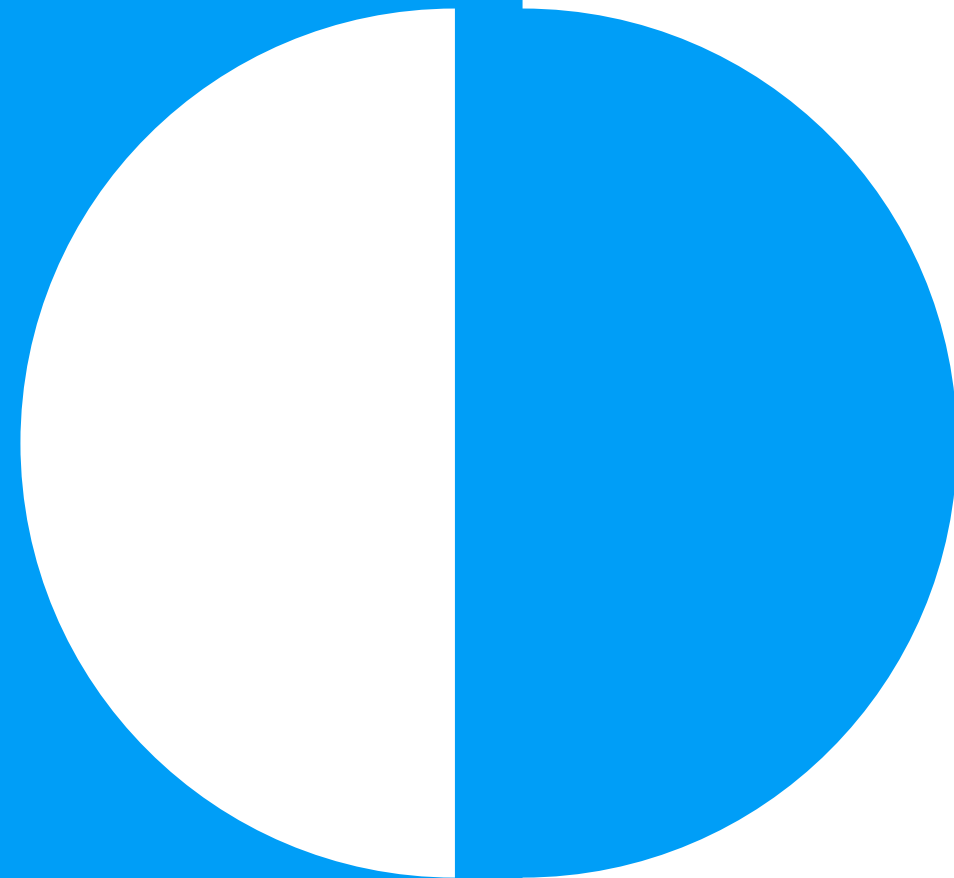
6. Do not ignore the burden of auditing and reporting

Expenditure of European funds should follow the rule of law. Auditing and reporting procedures emphasise the lawfulness. At the same time, the effectiveness of the policy being financed with EU funds is vitally important. Bringing both aspects better into balance will improve coherence between European policy and regional decision-making.

1.4 Report structure

Chapter 2 identifies and explains the tensions surrounding European environmental policy in more detail. Chapter 3 elaborates on the above suggestions. Part 2 contains the background information of this advisory report and the case study analyses.





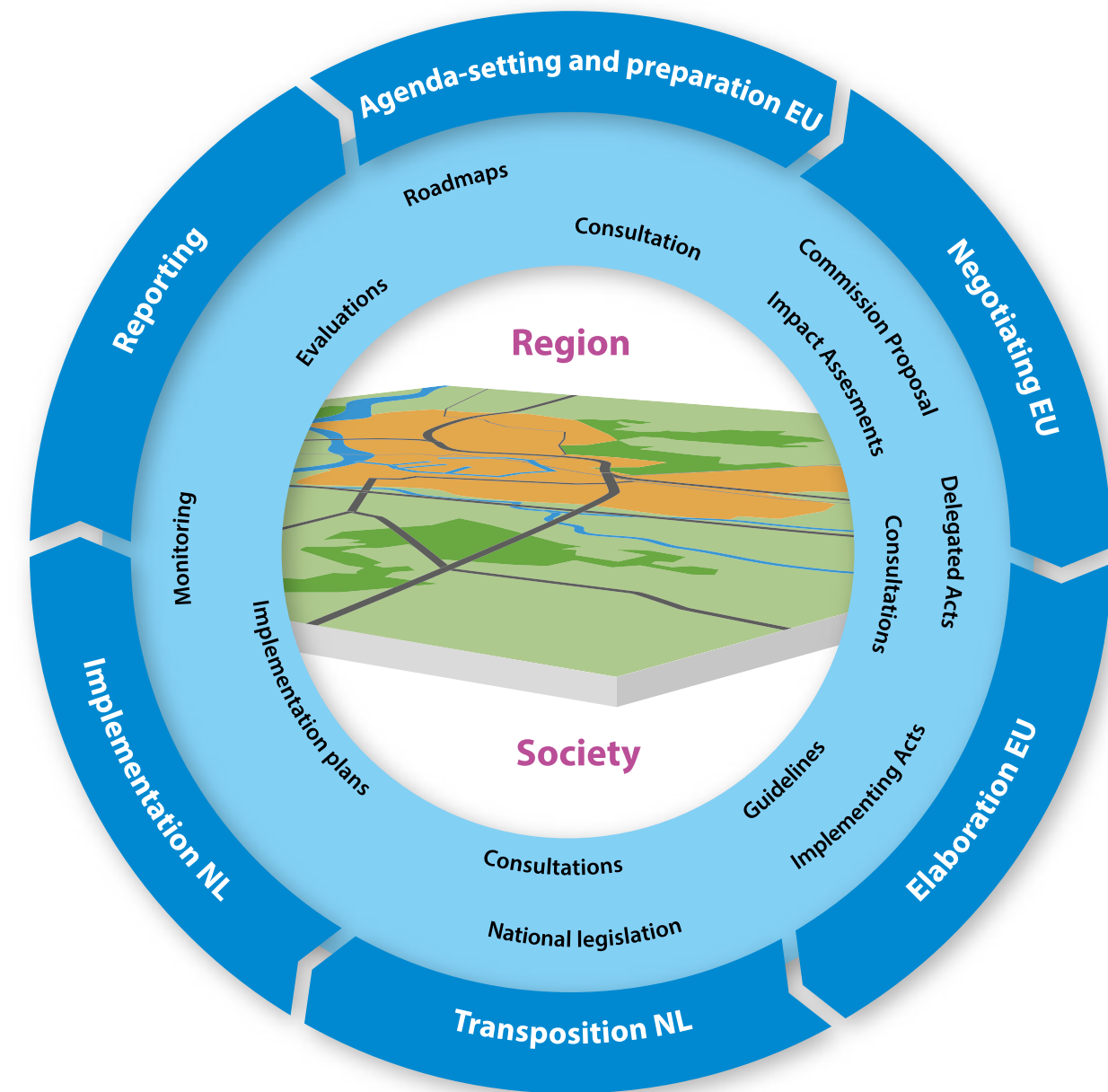
TENSIONS SURROUNDING EUROPEAN ENVIRONMENTAL POLICY

2.1 European legislation is created in stages

A staged policy cycle with various opportunities to influence decision-making

The Rli has identified two levels in the European policy cycle (see Figure 1 and Box 1). The first concerns decision-making at the European level. This is where Member States and other stakeholders can exert influence on European institutions via various lobbying channels. The decision-making arena comprises the European Commission, the European Parliament and the European Council. The second level concerns the translation of decisions made at the EU level into national legislation. This is the level which establishes the implementation regime, usually for the regional and local level, and reports to the national parliament and European Commission.

Figure 1: Stages of the European policy and legislation cycle



Box 1 Stages of the European policy cycle

EU decision-making

Agenda-setting and preparation (EU): Issues and topics can be raised in a number of ways: via citizens' initiatives spanning several Member States, by stakeholders via a request by a Member State (supported by other Member States), by the European Parliament or the Council, by European lobby groups, by the European Parliament or Council, European lobby groups, the European Commission itself (work programme) or another European institution. Products emerging from this stage include green papers (intended to stimulate discussion and initiate the consultation procedure), white papers and communications (proposals for new policy, oftentimes initial steps towards bills) and concrete legislative proposals.

Negotiation (EU): Commission proposals are subjected to discussions and negotiations between the European Commission, the European Council and the European Parliament. This ultimately leads to adoption or rejection of policy and legislation. Subsidiarity tests are performed by national parliaments and governments.

Elaboration (EU): the European Commission often issues implementing rules or other guidance to accompany legislation adopted by the European Council and the European Parliament. This can be done in various ways, which can have consequences for implementation.

Implementation in Member States

Transposition (EU → MS): in this stage the Member States must transpose the European legislation into national law and adhere to the agreed rules.

Implementation (MS): once the European legislation has been enacted and integrated into national laws and regulations, its implementation may be delegated to regional or local authorities.

Reporting (region ↔ MS ↔ EU): policy and legislation must be monitored, evaluated and enforced. Reporting on this process transpires from the region to the national level and from the national level to the EU. An implementation regime may be amended on the basis of an interim evaluation or feedback.

Source: Kunst, 2013, European Commission, 2013a, Ministerie van EZ, 2014c.

Lack of a concerted effort in the agenda-setting and preparatory stage

The agenda-setting and preparatory stage is crucial for the final outcome of the policymaking process. In this stage, issues are raised, policy options are drawn up and their anticipated effects investigated. This stage offers ample opportunities to all kinds of parties (government authorities, organisations) to sway the discussion, both formally and informally. Examples include the Road Maps and Inception Impact Assessments drawn up by the European Commission (see Chapter 2 in Part 2) and the stakeholder consultations organised by the European Commission. These instruments gain more prominence in the Commission's Better Regulation



Agenda (European Commission, 2015a). The preparatory stage can concern the question of whether European policy is really necessary or the choice of instrument (e.g. regulations, a stimulus package or pilot projects). This early stage is also important for introducing experiences or expertise about implementation practice into the policymaking process.

For the Netherlands this means that the input of subnational authorities and non-governmental organisations is indispensable. These are, after all, the parties that operate at the level of the local environment. The national and subnational authorities acknowledge the importance of gaining early insight into and consulting on the effects of EU proposals and the Dutch standpoint early on (i.e. in the negotiation and implementation stages). Both the national government and subnational authorities have pointed to the importance of strategically sharing information. The University of Twente (De Lange, 2015) investigated how, from the point of view of subnational authorities, decision-making on European legislation could be improved within the context of the Commission's Better Regulation Agenda (European Commission, 2015a). One conclusion from this study is that, despite the clear agreements between the various government authorities on paper, practice is quite another matter. The case studies in Part 2 of this advisory report also show a lack of concerted strategic action in the agenda-setting and preparatory stage. Remedying this would demand a coordinated vision on national and regional issues, on potential effective instruments and on the expected impacts of European policy in practice.

Anticipating definitive European decisions can frustrate implementation

In several instances the Netherlands did make a concerted effort during the agenda-setting and preparatory stages. However, the absence of a common vision and sufficient insight into the potential effects of policy options was partly responsible for creating tensions in implementation down the road. An example is when the Netherlands prematurely drafted and implemented national legislation on the reform of urban and regional public transport: only much later was the domestic legislation adapted to take full advantage of the latitude provided by the European rules (see Box 5 and Chapter 4 in Part 2). Several stages of the decision-making process for the Fourth Railway Package are also being pursued partly in parallel (see Chapter 6 in Part 2), in particular with respect to the development of the European railway safety system. While the regulation on the roll-out of the system is still being negotiated at the European level, at the national level, the system has already reached the 'plan elaboration' stage within the Multi-Year Programme for Infrastructure, Spatial Planning and Transport (MIRT) (i.e. implementation stage, see Box 1). This decision is primarily rooted in the need to replace outdated safety systems. A similar development can be seen in other European countries. The Ministry of Infrastructure and the Environment is working to prevent problems from occurring in practice by coordinating technical developments occurring at the national and European levels in a structured manner.

Tensions can also arise from a successful promotion national policy, such as nature policy, in the early policymaking stages. The final European regulatory framework for nature conservation proved, unexpectedly,



to be so far removed from the original national legislation that major implementation problems arose (see Chapter 3 in Part 2).

Finally, the Structural Funds case study shows how the principled Dutch standpoint regarding its net-payer status and its wish that affluent countries be excluded from Structural Funds policy (something as yet undecided at the EU level) denied the Netherlands the opportunity of using these funds for a long time (see Chapter 7 in Part 2).

Timing between stages can create tension

Each stage is concluded within its own timeframe. This means that, in practice, a long time can elapse between the preparation of a European decision and its implementation (this can range from a few years to decades). In other words, having got an issue on the European agenda it can take a lot of time before individuals, businesses and organisations actually experience its effects. The politicians and officials involved in the preparation and drafting of policy are often different from those responsible for its implementation. Moreover, in the interim circumstances may have changed, making the rules less appropriate.

2.2 Environment and planning policy arises in a complex European arena

The national government is no longer the ringleader

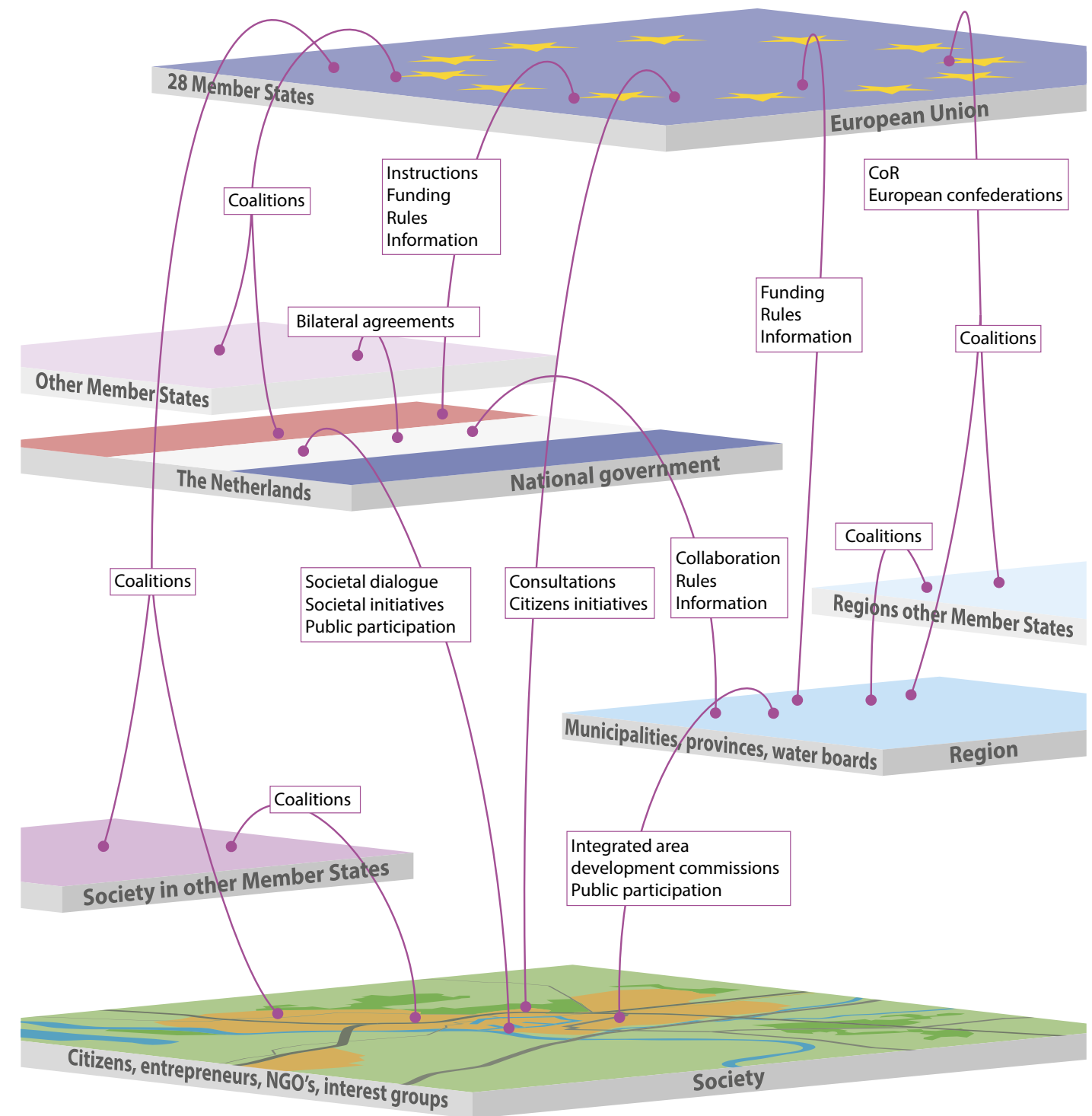
Besides the national government, the provinces, municipalities and non-governmental organisations also play a role in European decision-making, both formally and informally. Parallel processes occurring at different administrative levels influence one another (Princen, 2014). The different stages of EU policymaking and legislation are conducted within a complex and multilevel arena of European, national and regional authorities, lobby groups (unions, environmental organisations, trade organisations, etc.) and groups of citizens. Competing interests are balanced at and between levels according to the relevant perspective. Parties exert influence, either individually or in concert, when and where it is most advantageous. In addition to this web of influence and competing interests, the various tiers of government are strongly bound by policy and regulation; some governments have formal powers and responsibilities over other governments' decision-making, and money flows back and forth between governmental tiers. The result of these complex and not always transparent processes of policy development and implementation can be seen in the physical environment of citizens, businesses and organisations.

In order to create clarity within this complex arena, this advisory report distinguishes between four levels: EU, national, regional and society. The governments linked to the first three (the European Union, national government, the provinces, water boards and municipal authorities)



all have their own political perspective composed of the interests, circumstances and policy challenges manifest at their level. Parties exert influence outside their 'own' level and cooperate across administrative borders. The same parties that, for example, seek to influence political agendas or decision-making often have representation at the EU level as well. The choices that are made at each level partly determine the final impacts on the physical environment.

Figure 2: Europe, connected on all levels



Insufficient recognition of the EU as part of domestic government

European government is becoming increasingly conflated with domestic government, a process that has been intensified by the ongoing development of the internal market and the introduction of the euro. This political interdependence is so strong because national politicians are also part of the European government by participating in the preparation, adoption and implementation of policy. Many national politicians and officials participate in European decision-making process (e.g. through advisory bodies, expert groups, working groups, regulatory committees and management committees). Moreover, the physical environment brings together many policy areas. The common pursuit of a healthy and safe environment in all Member States has had, and continues to have, significant consequences for national policy ambitions and the development of national legislation.

The Rli has found that national politicians rarely mention the increased interconnectedness between European and national politics when talking about the EU. Even though Dutch environmental policy is increasingly influenced by the EU, national politics and policy practice is not always attuned to this Europeanisation (Rob, 2013). Various advisory bodies have recommended that the national government become more proactive in the EU (see Appendix 1: Advisory councils on European policy). They indicate how the national government can deal more effectively with the increased complexity, the ongoing decentralisation and the low public opinion of the EU. It is repeatedly pointed out that a shared vision and strategy on the EU between the involved governmental levels is still underdeveloped,

particularly regarding the agenda-setting and preparatory stage. The individual governmental levels and other stakeholders often operate strategically in the EU on their own behalf without sufficient regard for making a concerted effort.

Traditionally, national decision-making has frequently employed consultation arrangements between interested parties at an early stage. This has the advantage of engaging stakeholders in the development of legislation, which can increase support (Van Reenen et al., 2005). The Rli has found that the Netherlands often does not opt for this approach when it comes to European decision-making, even though the EU has built in room for consultation, especially during the preparatory stage.

Divergent aims and interests converge in the region

Various societal aims and interests are relevant inputs to EU decision-making. These include collective and private goals and interests of individuals, businesses and lobby groups and political objectives and interests at the national and regional level. These are not always consistent. Particularly at the regional level, tensions can arise between divergent aims and interests and their related policy challenges and it is also at the regional level that the effects of EU legislation are most clearly felt. Therefore the regional level is the ideal place to weigh up all these different interests. At this level, links are made between sectors and synergy sought between policies. Moreover, because regions are diverse, so too will the effects in one region differ from those in others.



European objectives are binding in all Member States and therefore must be followed, but Member States and regions still need flexibility about how and when they achieve the objectives. How abstract European issues become a tangible reality for citizens, politicians, lobby groups and businesses will vary from region to region. In addition, the preferences, needs and balance between public and private interests also vary between regions. For example, the results of an integrated assessment will be different in the urbanised Randstad and rural Rivierenland regions. Still, European legislation and/or its transposition into national legislation will not always provide the desired level of flexibility in implementation.

European institutions are open to ideas, but not everyone knows the way
Individuals, businesses, NGOs and even politicians find it hard to know exactly who decides what in the EU, how to exert influence and who to approach. European law changed once the Lisbon Treaty came into force. Its goal was to implement reforms to make the EU more democratic and governable after the enlargements of 2004 and 2007 added twelve Member States. This does necessarily mean that the European policymaking process has become clearer and more accessible, but European institutions are still relatively accessible, even to individuals. European politicians and Commission officials can easily be reached for informal contact during the different stages of European policymaking. The same is true for members of the European Parliament, the Committee of the Regions, non-governmental organisations and other lobby groups active in Brussels, as well as the permanent representatives of the Member States. In addition, EU institutions regularly organise participation processes

when representations can be made or events on a particular theme.

Examples include the public consultations by the European Commission and European Parliament (e.g. for a new policy or law or an evaluation of existing legislation) and discussions via social media and other online forums.

In its Better Regulation Agenda, the European Commission proposes improving stakeholder access to the various stages of the European decision-making process by listening better and providing better explanations. The Commission hopes this will enable it to develop better legislation and lighten the administrative burden (European Commission, 2015). This means more consultation and evaluation and therefore more opportunities for regions to provide input. In 2008, the Wientjes Committee found that such instruments, which are often combined with sunset clauses, could help lighten the administrative burden, but also carry the risk of delays and bureaucratic controls (Commissie Wientjes, 2008).

Shifting positions in the political arena

The increased complexity and interconnectedness in the European arena is related to the impact of European policy on the environment, the decentralisation of authority, the proliferation of societal initiatives and the strategic behaviour of many stakeholders acting on various administrative levels. The national government had always occupied a central position in this complex European arena. It represents the Netherlands – including the regions and the public at large – at the European level in the negotiations between the European Commission, the European Parliament



and the Council. The national government is also primarily responsible for translating legislation drafted at the European level (including environmental policy) into policy frameworks for implementation.

In the meantime, subnational authorities are reinforcing their position in European and national policymaking arenas by becoming better informed, trying to influence policy, opposing obstructive legislation, backing advantageous legislation, seizing opportunities and networking (Mastenbroek et al., 2013; Rob, 2013). Subnational authorities are expanding their presence in Brussels, and for good reason: being active in the preparatory stage of policymaking can ensure that regional interests are reflected in the final decision-making process and helps to gauge potential regional effects. More regional involvement as early as possible in the policymaking process can increase public support during implementation. Formally, the EU leaves it up to the Member States how they choose to structure their public administration and modes of implementation, but it does provide various channels for regional involvement in the decision-making process. Examples include the Committee of the Regions' advisory role, the requirement that the Commission demonstrates that policy proposals do not go beyond what is necessary (proportionality principle) as well as the regular consultations and impact assessments. In 2014, the Dutch Ministry of the Interior and Kingdom Relations initiated a pilot study on how subnational authorities could become more engaged in the formulation and transposition of European legislation. The results are expected in the autumn of 2015 (see Chapter 2 of Part 2). Agreements such as the inter-authority relations protocol (*Code Interbestuurlijke*

Verhoudingen, see Box 3) have already been concluded between the national government, provinces, municipalities and water boards to involve subnational authorities in EU policymaking. Regions also participate in consultations on new EU proposals. Despite these agreements, local and regional interests still receive little attention in European policy development. For example, the impact assessments do not consider the effects of Commission proposals at the local and regional level in great depth (De Lange et al, 2015). Furthermore, in its Better Regulation Agenda the European Commission only talks about the involvement of stakeholders, not subnational authorities (European Commission, 2015a).

Bringing these agreements to fruition and improving working relations requires that the various governments adopt a professional attitude and trust one another. There is room for improvement in this regard (De Lange et al., 2015). The subnational authorities have expressed concerns that the processes have become too bureaucratic and trust is dissipating. The national government, in turn, feels that involvement of subnational authorities can slow down the formulation of a national position and reduce effectiveness.



Box 2 Preparation of domestic input and transposition of European legislation

Code of Inter-administrative Relations

The inter-authority relations protocol contains agreements between the national government and subnational government authorities about involving the latter in European policy preparation as early as possible. The protocol was updated in 2013, mainly to formalise agreements made between governmental tiers on European matters and to involve subnational authorities in decision-making at an early stage (Ministerie van Binnenlandse Zaken, 2013). The Dutch Council of State uses this protocol to evaluate legislation.

The BNC interdepartmental working group

In the Netherlands, the Dutch standpoint on new proposals and Communications by the European Commission are prepared in a BNC brief (*Beoordeling Nieuwe Commissievoorstellen: Assessment of New Commission Proposals*). These are drawn up in consultation between ministries and the regional and local government associations and discussed in parliament. The staff BNC working group not only assesses new Commission proposals, but other relevant publications such as Communications, Green Papers and White Papers. The working group is chaired by the Ministry of Foreign Affairs and includes representatives from all ministries as well as from the associations of provinces (IPO), municipalities (VNG) and water boards (Unie van Waterschappen).

The coordinating committee sends the BNC briefs to the Dutch Council of Ministers, which then submits them to the Senate, the House of Representatives and the Dutch members of the European Parliament. All of this must take place within six weeks of the Commission proposal's publication.

A BNC brief contains the national government's description and assessment of matters such as subsidiarity and proportionality, red tape and administrative burdens as well as the financial implications. The consequences for subnational authorities, businesses and citizens are also included (Mastenbroek et al., 2013).

Integrated Assessment Framework for Policy and Regulations (IAK)

Since 2011, the Integrated Assessment Framework for Policy and Regulations (*Integraal Afwegingskader: IAK*) is used to draw up new national legislation and to adapt existing legislation to European legislation. The IAK is analogous to the impact assessment applied at the EU level and in a number of other countries. The crux of the IAK is that each policy proposal submitted to parliament must provide an adequate response to the following seven questions: What is the rationale? Who is involved? What is the problem? What is the objective? What justifies government intervention? What is the best instrument? What are the consequences? The consequences for other governments must also be spelled out, including the appropriate financial relationships (Ministerie van Veiligheid en Justitie, 2011).



In the Netherlands, the law on public sector compliance to European regulation (*wet Naleving Europese regelgeving publieke entiteiten: Wet NERpe, 2012*) makes subnational authorities more accountable for complying with European regulations (see Chapter 7, Part 2). European legislation such as the public procurement directive can contain rules that have direct consequences for subnational authorities. These are responsible for applying European legislation, even if it has not already been completely and correctly transposed into national legislation. The lines of command do not run exclusively via the national government anymore. The national government is increasingly just one party among many European governments and subnational authorities.

Because of the extensive conflation of responsibilities at the various tiers of government and shifting positions, it is vital that local and regional interests and impacts are taken on board in European policy development at an early stage. The divergent interests and expected regional impacts do not automatically receive appropriate attention. The development of Natura 2000 is a case in point: nature conservation groups had more influence than other stakeholders during the agenda-setting and preparatory stage (see Box 3 and Chapter 3, Part 2). It is also important to share implementation problems with the European Commission in a structured manner, which is something that does not always happen (see Chapter 2, Part 2).

Box 3 Insufficient attention to the plurality of interests creates conflict

In addition to the national government, NGOs played an active role during the agenda-setting and preparatory stage of EU nature policy. For this reason, the national government was less attentive to ensuring that other legitimate interests had equal input. The initiative was too much in the hands of a tight coalition of officials, scientists and lobbyists who viewed nature as a technocratic matter (Van Keulen, 2007) and who were in complete agreement about ecological targets.

Regional and local stakeholders were not properly informed of the ramifications of the policy for the management and protection of species. For example, the interests of landowners and farmers were neglected for a long time. Partly for this reason, conflicts erupted during the implementation stage. These conflicts were intensified by the fact that a long time had elapsed between agenda-setting (and subsequent decision-making) at the EU level and the moment that citizens, businesses and NGOs experienced the effects at the regional level (see Chapter 3, Part 2).

Internal EU borders constrain rather than connect

As the example of the Water Framework Directive shows, the environment respects neither provincial nor national borders (see Chapter 3, Part 2). The provinces, water authorities and municipalities along the German and Belgian borders are keen to establish cross-border cooperative arrangements. Environmental and planning problems are often best



tackled at an international scale, such as cross-border public transport to improve regional accessibility, cross-border investments in flood protection and cross-border cooperation to improve surface water quality. Whether national legislative regimes are based on EU policy or not, border regions still have to deal with the constraints and problems caused by the differences between these regimes, which, in theory, should not exist.

2.3 Differences in governance principles and political culture

European governance in the area of the physical environment has led to frictions with Dutch policy practice on several points.

Soft approaches are not always compatible with European regulations

The EU generally opts for rules and standards to achieve environmental objectives (Evers & Tennekes 2014). Depending on the nature and the context of the issue at hand, other instruments can be considered, such as those based on learning and adaptation (EEAC, 2003; Trubek, 2005; Termeer, 2008; Rli, 2015). The Netherlands has some experience with soft policy and instruments like stimulation packages, targeted revolving funds and Green Deals (see Box 4). These methods are not always compatible with European legislation.

Box 4 Soft approaches in the Netherlands

The Dutch have some experience with using soft forms of cooperation, innovation and funding to increase problem-solving capacity at the local and regional level.

Experiments/pilot projects

Experiments are being carried out in various policy areas in the Netherlands to allow innovative combinations of measures to be tested in practice. These pilot projects can be linked with community initiatives, such as the farmers' collectives, which draw up a common strategy and a plan for a particular area. These collectives are now included in the implementation of the Common Agricultural Policy and Rural Development Plans (POP3). In the Delta Programme, pilot projects are being used to innovatively apply technical expertise and know-how in area-based projects. The Crisis and Recovery Act allows pilot project status to be used to kick-start place-based processes. This experience is being used in the formulation of the new Environment and Planning Act.

Revolving funds

A revolving fund disburses financing to third parties. This occurs for example by issuing loans, or offering guarantees or shares. Repayments and reimbursements return to the fund, allowing this money to be used to finance new projects. This distinguishes a revolving fund from a grant, which usually means 'once eligible, always entitled'. Recent studies have shown that there is some experience with revolving funds financed by the European Union and how state aid and public procurement issues



can be tackled (ERAC & Ecorys, 2015). Revolving funds are often used as incubators for innovation (KplusV, 2015).

Green Deals

Green Deals are agreements made between the national government and parties such as businesses, NGOs and other government authorities. The Green Deal supports the implementation of sustainable initiatives in areas such as energy, climate change, water, raw materials, biodiversity, transport, biobased economy, construction and food. The government uses Green Deals to remove barriers to sustainable initiatives, for example by adapting legislation and regulations, acting as an intermediary to bring organisations together, expediting negotiations and mustering financial resources.

Interpretation of European directives during transposition

European directives must be transposed into national legislation.

The Council of State stated that, ‘whenever legislators wish to model regulations as much as possible on EU law, they should take the particular nature of European law into account’ (RvS, 2012). If, for example, EU law only establishes a minimum norm that applies in all Member States, as is the case with the Birds and Habitats directives, Member States are still free to set higher standards on the basis of an independent assessment grounded in the specific conditions of that Member State. Compliance with EU law therefore does not necessarily imply that the regulation must limit itself to the European minimum. According to the Council of State’s 2012

advice on a bill for the Nature Protection Act, the national context should still be taken into account even if the transposition is a literal translation of the European legislation.

In addition to information regarding transposition, the European Commission also regularly publishes manuals and guidelines that provide details on how to implement parts of the policy to help overcome implementation problems encountered in practice. The Water Framework Directive’s ‘pragmatic implementation’ and the ‘one out, all out’ principle serve as examples (see Chapter 5, Part 2). European directives also provide room for interpretation in how they are translated into national legislation. As the case of public transport illustrates, this freedom of interpretation may or may not be used (see Box 5).

Box 5 Freedom in EU directives not used to full extent

The PSO Regulation regulating public passenger transport services (European Union, 2007) allows for many different arrangements: completely free-market public transport (no regulation), in-house contracting or public procurement. The underlying aims are to create room for competition where previously only national monopolies were active and promoting more attractive, innovative and cheaper services. These aims are comparable to the Dutch Passenger Transport Act 2000 (Wp 2000), which predates the PSO Regulation.



Wp 2000 opts exclusively for competitive public procurement. Competitive bidding has taken place since 2003, except in the large cities, which were granted a legal extension partly because their public transport market differs from other parts of the country. In 2007, after the PSO Regulation was adopted by the European Council and Parliament, the Dutch House of Representatives demanded that the Wp 2000 be revised to allow in-house exceptions for the big cities. As a result, the big cities now have a different kind of arrangement from the rest of the country. The other option, completely free-market public transportation, is still not allowed.

Involving users

The Wp 2000 formally involves representatives of public transport users in the awarding of contracts. The main objective of the EU's PSO Regulation is similar to those of Wp 2000, namely to increase the number, safety and quality of public passenger transport services at a lower cost to consumers (European Union, 2007). In contrast to the national regulations, the PSO Regulation does not give users a formal position. The Wp 2000 maintains this position after 2007 as well (see Chapter 4, Part 2).

Top-down character of EU policy creates tension with horizontal forms of governance

Notwithstanding all the various avenues for consultation, citizens' initiatives and lobbying, EU environmental policy still has a top-down

character. Regional input is often guaranteed on paper, but there is room for improvement in how this is handled in practice (De Lange, 2015). In the Netherlands, private parties, individuals and subnational authorities are increasingly involved in developing policy and carrying out public services. Such grassroots initiatives often clash with existing European regulations (e.g. state aid rules) and the European Commission's insistence on strict compliance (De Zwaan, 2012).

Sectoral approach clashes with a regional need to balance competing policy aims

European policies and regulations often take a sectoral or technical approach. This is in part a reflection of the sectoral organisation of the European Commission, but is also caused by the fact that policy preparation and design takes place at the EU level in special working groups and technical committees. The national experts participating in this process are themselves, more often than not, from insular national organisations. A technical and/or sectoral focus at the EU level (or national level) can be at odds with the outcome of regional planning processes in which divergent sectoral policy aims are combined. In practice, trade-offs take place between sectoral objectives at the regional level and integrated assessments are made in order to maximise synergy between policy goals in a particular area. An integrated place-based approach needs the freedom to balance different sectoral objectives and develop innovative arrangements at the regional level. Concentrating on sectoral European goals makes this more difficult. At the same time, there is a trend in the Netherlands to provide for the integration of policy objectives in legislation



and create flexibility for local interpretation and experimentation (e.g. in the new Environment and Planning Act). When doing so, it is important to strike a balance between protection and development (Rli, 2015; see also Chapter 2, Part 2).

The European Union is evolving and its governance philosophy is changing accordingly

Gradually the European Union is also adopting a more strategic and integrated approach to achieving its objectives. Examples include the Europe 2020 strategy, the Horizon 2020 research and innovation programme and the European Innovation Partnerships (see Box 6). The EU uses the Open Method of Coordination to support this more strategic approach (see Box 6). The Structural Funds, for example, have much experience arranging cooperation between the EU, national governments and regions. Built-in evaluation provisions and sunset clauses in the Structural Funds attempt to enhance the learning effect and, in this way, arrive at better regulation (European Commission, 2015a).

Box 6 New governance mechanisms within the EU

Cooperating at the European level has scale advantages and can help to prevent fragmentation, even in areas where powers rest with national and regional authorities and other parties. There is growing experience with governance mechanisms less oriented to regulation and more attuned to cooperation within networks, policy learning and dealing with diversity.

Open Method of Coordination

The Open Method of Coordination (OMC) was introduced to bring about cooperation between Member States in cases where this has advantages for achieving national policy. Member States agree on common targets which are not binding, but are approved by the Council. The Member States help each other to reach their targets by exchanging information and best practices. This method is used for the National Reform Programmes, the Europe 2020 strategy and the Horizon 2020 research and innovation strategy. The Commission's role is limited to supervision and the European Parliament and European Court of Justice are hardly ever involved.

European Innovation Partnerships

European Innovation Partnerships (EIPs) were introduced to stimulate better regulation, standardisation and market performance, and thus encourage more investment. The EIPs are part of the Europe 2020 strategy. This new instrument covers the full cycle from research and development to innovation. Public and private parties from various countries pool their resources to expedite innovation. Five EIPs have been launched: Active and Healthy Ageing, Water, Agricultural Sustainability and Productivity, Raw Materials, Smart Cities and Communities. In EIPs, the European Commission works in conjunction with national governments, businesses, researchers, NGOs and other stakeholders. Each EIP must reach its target by 2020 and deliver practical guidelines and impact studies

Source: website European Commission



Auditing system puts strains on implementers

Societal initiatives and horizontal governance methods conflict with the increasingly strict auditing and reporting requirements for programmes like the European Structural Funds and Investment Funds. Emphasis is placed on the legality of expenditures, while at the same time the European Commission is striving for more relevance and effectiveness. At present, Structural Fund and Investment Fund payments in the Netherlands have to deal with four auditing institutions: the European Court of Auditors, the European Commission, the Dutch Court of Audit, and the Central Government Audit Service. In addition to these audits, there are also annual progress reports, progress meetings and financial reports and prognoses as well as random audits. The implementing parties experience the accounting procedures associated with the legality of expenditures as a significant or excessive burden. Opportunities are missed in the region because decisions are made in advance not to take advantage of funding possibilities because of the administrative burdens these can bring (see Chapter 7, Part 2).

The first experiences with agri-environmental cooperatives also show that tension can arise between the European perspective and the Dutch implementation regime. Cooperatives of farmers and farm conservation groups draw up a management plan together and receive grants from the Agricultural Fund for Rural Development (EAFRD) of the Common Agricultural Policy (CAP) to implement the plan. This forecloses the option of farmers to apply for an individual grant for farm conservation management (www.portaalnatuurenlanschap.nl). The tension is mainly

between accounting and effectiveness, and this sometimes leads to inflexibility, ineffectiveness, injustice and higher costs (see Box 7 and Chapter 7, Part 2 for some examples).

Box 7 Examples of tension between auditing and effectiveness

The first experiences with agri-environmental cooperatives show that tensions can arise between the European approach and the Dutch implementation regime. The European auditing system is designed for individual farmers and not cooperatives. This has placed demands on the implementation of the policy via collective agri-environmental management.

One of the points of contention regards the way results are measured. The EU measures the achievement of ecological targets in terms of species, while the Netherlands takes a habitat-oriented approach that is elaborated in provincial plans. The methodology is insufficiently developed to adequately measure the baseline situation, the effects of the measures taken and their eventual impact. There is also a lack of knowledge about how to adjust measures in order to achieve the desired targets. The first European midterm review (MTR) will take place in three years, but the effects of agri-environmental schemes will only become visible after many years.

There are also differences between European and Dutch regulations regarding the possibilities of making adjustments. European legislation



provides for the possibility of adapting the management plan, within certain parameters. EU law allows adjustments to be made immediately, but under Dutch administrative law adjustments must be submitted to the auditing service five days prior to their implementation. If cooperatives do not respect this rule, they risk being sanctioned by an unannounced audit (personal correspondence).

Monitoring and evaluation is an important part of the European Commission's Better Regulation Agenda, which states that monitoring should be proportional and avoid overlap with other bodies' monitoring systems. The European Commission has already applied monitoring standards developed in the Make it Work project in a pilot project. The European Commission's proposals are, however, less explicit regarding auditing and reporting. The proportionality principle is particularly important in this regard.

2.4 Blurring of fact and fiction about the EU

The tension arising between legislation originating from Europe and the implementation of environmental policy at the subnational level has its origins in the increased complexity of the political arena. This complexity is given scant attention in the political and public debate on the EU, and fact and fiction have become blurred. It is often suggested that the EU has an extensive or excessive impact on the physical environment. The fact that various parties repeatedly claim that the Netherlands is 'locked down' by EU nature policy is a case in point (see Box 8). Another example is when

politicians hide behind the EU's free market requirement whenever the quality of public transport is raised. In fact, the EU grants more latitude in this matter than the Netherlands chooses to use. These two examples are described in more detail in Chapters 3 and 4 in Part 2.

Box 8 A Dutch lockdown?

The European Member States have entered into a mutual obligation to protect biodiversity in Europe. To realise this, the Birds and Habitats directives were adopted and Special Areas of Conservation (SACs) designated which together comprise a pan-European nature network of Natura 2000 sites. The network concept is partly based on Dutch nature policy.

The Dutch Natura 2000 sites which came into being as a result of this policy have been a topic of debate since the beginning of this century. The discussion was mainly caused by the tension between economic growth and development pressures on the one hand and ecological protection on the other. Development interests began to feel that the level of nature protection agreed to at the EU level had created a 'lockdown' in the Netherlands.

Various Dutch studies found that European nature protection legislation was not as restrictive as critics had claimed (Arnouts & Kistenkas, 2011). An Interministerial Policy Review, for example, concluded that it was more a matter of inadequate communication between government

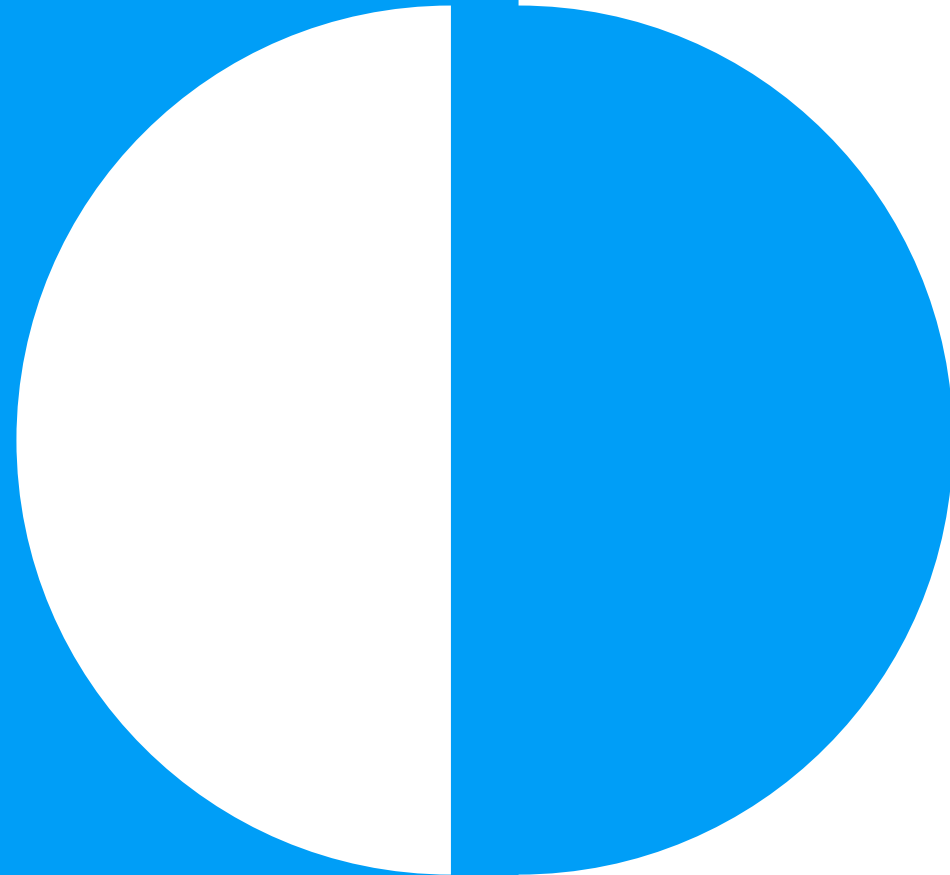


authorities, the business community and nature conservation organisations (IBO, 2003). Nevertheless, the image of a 'lockdown' persisted, especially in the language employed by organisations representing rural business interests such as the Confederation of Netherlands Industry and Employers (VNO-NCW), Royal Association for SMEs (MKB-Nederland), Dutch Federation of Agriculture and Horticulture (LTO Nederland) and the Association of Recreation Entrepreneurs (RECRON).

In June 2009, a letter from Dutch Prime Minister Balkenende to President of the European Commission Barroso reinforced the view that Natura 2000's strict protection regime was stifling economic development (Balkenende, 2009). The letter argued that the wording of the precautionary principle tipped the balance towards ecological values and away from economic and other individual interests, and argued for amending the directive on this point. Barroso replied that the current directive contained enough scope to resolve the conflicts mentioned by Balkenende at the national level (Barroso, 2009). This echoed what others were saying in the 'green' departments at the former Ministry of Agriculture, Nature and Fisheries (LNV), the implementation agency Regiebureau Natura 2000, the provinces and NGOs such as Natuurmonumenten (see Chapter 7, Part 2).

In recent years, the Advisory Council on International Affairs (AIV) has repeatedly and unequivocally reproached the way Dutch politicians frame the EU. According to the AIV, the European Union begins with national politics and if the current crisis in confidence in Europe is to be overcome, national politicians should be more vocal about their policies on Europe and make clear decisions (AIV, 2014). The tenor of public discourse needs to change (AIV, 2012): 'Politicians reap what they sow: in the past they have often created a false dichotomy between The Hague and Brussels – sometimes deriding European institutions – which has done little to help citizens identify themselves with Europe.' The Rli concurs with these conclusions; the false dichotomy mentioned by the AIV and ambivalent attitude were also encountered during the preparation of this advisory report.





REDUCING TENSION IN ENVIRONMENTAL POLICY

3.1 Act strategically during the preparatory stage

The agenda-setting and preparatory stage offers sufficient opportunities to exert influence on European legislation. This requires a coordinated and strategic input by government authorities and civil society organisations according to a shared vision on national and regional issues and about the pros and cons of potential policy instruments. This collective strategic input should occur as early as possible in European decision-making, namely in the agenda-setting and preparatory stage before EU proposals see the light of day. This means that the Netherlands (in other words the national government together with subnational authorities) should formulate clear opinions about which national and regional interests can be realised through European policy. Engaging in an open dialogue about national and regional interests, consequences and dilemmas will allow the national government, subnational authorities and other parties to prioritise issues. For each issue, the parties can draw up a shared vision and formulate a European policymaking strategy. This also means that politicians need to conduct a real debate on the meaning of Europe for the issue at hand. This vision or strategy could contain the following elements:

- The issues relevant to the particular topic in the Netherlands (nationally and regionally), including the possible consequences of conflicting interests;
- A shared level of ambition and a common vision regarding the instruments to be used;
- A common understanding of what can and cannot be achieved at the European level;

- The potentially effective means, avenues and moments for exerting influence on the European policy cycle;
- Identification of potentially important partners in the international arena (e.g. other Member States, international networks, NGOs) needed to achieve the common goal;
- The need for regional differentiation in the implementation of potential European policy;
- Identification of opportunities provided by existing national policy and potential discrepancies with European developments and governance principles.

The national and provincial Environment and Planning Visions to be drawn up under the Environment and Planning Act offer a unique opportunity for the Netherlands and its regions to take stock of relevant issues. These strategic visions serve as a logical point of departure for a common strategy between the various tiers of government and can serve as an early investment in European policy development (see Chapter 2, Part 2).

3.2 Stimulate collaboration between national and subnational authorities and the public

The effects of overlapping policy objectives within a single area become visible at the regional level. Subnational authorities, civil society and individuals are aware of these issues. Despite formal agreements between the various tiers of government, relations with Europe are far from optimal, even though NGOs and businesses manage to find their way to Brussels.



When the European Commission develops new policy or amends existing legislation it organises a number of public consultations and reports on their outcomes. This allows individuals, companies and organisations with interests or expertise in that particular policy area to help the European Commission fine-tune its proposals before they are submitted to the Council or Parliament for approval. The Netherlands also has procedures in place that guarantee stakeholder input when drawing up new national legislation and regulations (see Box 3). The Rli feels that national consultation in the agenda-setting and preparatory stages have added value.

In theory, this situation can be improved by devising a consultation strategy for Dutch input in Europe. This would entail identifying which parties should be consulted and at what stage in the decision-making so that the opportunities to exert influence at the EU level can be seized as fully and as early as possible (see Box 9). In addition, the national government needs to take responsibility for the outcome of this process and communicate this transparently and honestly.

Box 9 CAP decision-making: dialogue with individuals, businesses and NGOs

The former Ministry of LNV organised a broad public debate on the proposals for the CAP reform for the 2014–2020 period. This was conducted in regional venues, via LinkedIn, the website toekomstglb.nl and Twitter. Discussions within organisations and networks were shared with a broader public via social media.

The decision-making on the CAP has recently been concluded and work has just started on implementation. It is therefore too early to tell what effects this broadening and intensification of the public debate has had. Still, it holds lessons for other policy areas in the following respects: linking research and dialogue, broadening and intensifying the debate, seeking new forms of collective responsibilities, engaging local initiatives in the process and identifying the scope for negotiation in both Brussels and The Hague.

In the lead-up to the drafting and adoption of the 2014–2020 rural development plan, the national and provincial authorities, together with NGOs, initiated a process towards a rural plan (POP3) supported by all parties. This plan fits within the partnership agreement approved by the European Commission. The national government, together with the regional and local authorities, social partners and NGOs developed this partnership agreement on how to make full use of the various European funds (see Chapter 7, Part 2).

3.3 Promote other governance options than regulation

The EU usually seeks to implement environmental policy via regulations and standards. European policy ambitions are usually well aligned with Dutch national policies, but the strict normative character of the European policies can present difficulties in practice. Allowing softer governance instruments would benefit implementation. There have been good experiences with these in Dutch policy practice, even in terms of

effectiveness. Countries like the Netherlands can guarantee compliance with European targets using softer forms of governance. A mix of instruments is better suited to dealing with regional specificity.

At the EU level there also seems to be a movement away from sectoral regulations in favour of a broader, more strategic approach that uses an optimal mix of governance mechanisms. Not more or fewer instruments, but a more strategic approach with more public input in all stages of the policy cycle (see Chapter 2 in Part 2). This builds upon experiences with the Structural Funds and the application of the Open Method of Coordination for the European policy strategies (Lisbon Strategy, later Europe 2020 in conjunction with Horizon 2020). This includes cooperation, communication, working towards common goals, learning and benchmarking.

The agenda-setting and preparatory stage is the best time to raise the issue of governance and type of policy. Communicating Dutch best practices, such as revolving funds and Green Deals (see Box 4), at the European level can ensure that these approaches are in line with EU governance mechanisms and promote synergy between European environmental policy and national policy instruments.

3.4 Acknowledge regional diversity by allowing flexibility for interpretation

Regional circumstances, preferences and needs differ, which means there is a need for regional interpretation of policy during implementation. At the same time there are public interests that transcend the regional level. In order to do justice to interests at both levels it is vital that right from the preparatory stage the national government and the regions are fully aware of potential impacts and regional diversity. There are opportunities to inject flexibility for regional or local interpretation into both the European policymaking process as well as national transposition. The Impact Assessments and consultation in the preparatory stage offer good starting points for this. The knowledge and experience of subnational authorities is a valuable resource in this respect. There is also a need to compile examples of laws and rules being used proactively to support citizens, businesses and municipalities and simplify implementation (see Chapter 3, Part 2).

As stated above, in order to safeguard regional diversity it may be necessary to discuss the governance method to be used at an early stage in the process at the European level. This means that other policy tools than regulation should be considered (see Section 3.3). Alternatively, when regulation is chosen, demands can be made regarding the type of regulation to be used. It is also important that any difficulties encountered in the implementation of European legislation are quickly reported to the European level and the national government via the appropriate channels and instances.



Performance standards create room for implementation

The good experiences with the Water Framework Directive (Box 10) show that flexibility can be increased if the national government and other players at the subnational level ensure that provisions in EU regulations are oriented to the ends and not the means. This also applies to the transposition to national legislation. The Netherlands still tends to translate European directives more strictly than required by the European Union. If rules concerning methods are unavoidable, the principle of equivalence should preferably be applied: this makes it is possible to choose options other than those mandated, provided that the outcomes are demonstrably equivalent to that which was required (see Chapter 5, Part 2).

Box 10 Regional involvement in the Water Framework Directive

During the early stages of the Water Framework Directive (WFD), the Netherlands worked on the implementation strategy mainly within a technical/official capacity at the EU level. As political involvement grew, so too did the awareness of the implications, also at the regional level. Due to previous experiences with the Groundwater Directive and the 1991 Nitrates Directive, which led to a stringent manure policy, attention was repeatedly drawn to the specific Dutch context. In addition, the European Commission and other Member States were regularly briefed on progress being made in the Netherlands.

In 2005, the Dutch successfully introduced the pragmatic approach [Dutch: *Praagmatische aanpak*], an agreement made in the city of Prague at the initiative of the Netherlands). This approach sets goals in relation to the current situation and realistic policy options instead of using a theoretical reference situation with no empirical underpinnings. This approach gave water managers confidence, because it was closer to actual practice and stimulated national implementation (i.e. the EU also listens to Member States). Since the target was adopted politically (deemed feasible and affordable), priority was given to achieving it, but using the maximum period allowed so that the costs were socially acceptable (see Chapter 5, Part 2).

Experimentation clauses allow for customisation

Another way to increase room for interpretation is to ensure that EU legislation contains experimentation clauses. Experimentation clauses are intended to allow trials to be conducted, if necessary via an exemption, to ascertain the extent to which a certain method, instrument, procedure or other activity contributes to solving a problem in society. Such clauses seek to gain insight into the expected effectiveness of a measure and should be limited to rules with a limited scope (Ministerie van Justitie, 2000). Dutch law also contains experimentation clauses (e.g. the Environment and Planning Act recently adopted by the House of Representatives).



Transposition should take regional diversity into account

The national government should employ performance standards and framework arrangements as much as possible when transposing EU policy in order to provide sufficient discretion and allow the various sector policies to be balanced at the regional level. When developing legislation, the national government has pledged to explain the consequences for subnational authorities (IAK, 2013). The Rli feels that, in addition to this, the national government should, before finalising the transposition, actively explore how much discretion EU environmental law contains regarding choices for instruments and interventions (see for example Box 4). One way this can be done is to investigate how other Member States interpret certain requirements and how these are transposed and applied (VROM-raad, 2008). The national government can also conduct ‘pilot processes’ with regional stakeholders (subnational authorities and other possible implementers) during transposition. These trials can test different kinds of implementation and assess their impacts on citizens and the environment. The results can be used as an input to the actual transposition into Dutch law. In practice, the deadlines for transposition of European legislation are relatively short compared to the length of the Dutch legislative process. This already regularly causes tension, as the available time for pilot processes is possibly too limited. This can be dealt with in part by taking advantage of experiences in practice and acting more strategically in the preparatory stage.

3.5 View borders as European connections

Adequate solutions in environmental policy demand a suitable level of scale and the initiation of effective partnerships. The appropriate scale is not necessarily defined by national borders, but effectively limited by them in practice. The problem-solving capacity of national policy and legislation has proven inadequate for the specific interests and environmental issues prevailing in border regions. European policy recognises this deficiency and offers opportunities for improvement.

European environmental directives and regulations contain provisions that promote cross-border coordination and cooperation, although these remain voluntary. Cross-border cooperation in environmental policy can be improved by employing such provisions more strategically in agreement with neighbouring countries in order to arrive at a common approach to the national and regional challenges. Ideally, strategic cooperation with neighbours should already take place as early as the agenda-setting and preparatory stage in order to ensure that European policy provides enough support for breaking down borders (see Chapter 5, Part 2).

Detrimental border effects are clearly visible in areas such as the labour market (VNG, 2015). Border effects also affect the implementation of environmental policy when European directives are transposed into national law. Examples include the synergy that can be achieved in water management, cross-border mobility and waste processing. The Rli has found that so far there has been only limited national attention to such regional border effects. In its 17 July 2015 letter to parliament on



cross-border cooperation, the national government promised to assess whether such effects are sufficiently taken on board in new laws and regulations. The Rli stresses that border effects should be viewed more broadly than just (usually negative) economic effects: public interests in the physical environment should be an integral part of such assessments. A central hotline for border effects – as proposed by VNG (2015) – can also help solve problems in border regions (see Chapter 7, Part 2).

3.6 Reduce the auditing and reporting burden

Monitoring and evaluation are an important part of the European Commission's Better Regulation Agenda. This document clearly states that monitoring should be proportional and that overlaps should be prevented between monitoring systems. Evaluation supports decision-making, contributes to strategic planning and future policy; it also helps mutual learning and the identification of unintended consequences. The proposals are, however, less explicit about auditing and reporting, even though this is precisely where the proportionality principle should be applied. The Rli feels that improvement and simplification of the auditing and reporting system could reduce the implementation burden, and therefore should be included in the Better Regulation Agenda process.



PART 2 | ANALYSIS

INTRODUCTION AND
ANALYTICAL METHOD



To obtain insight into the complex process of European policymaking from agenda-setting to implementation at the local level, Rli carried out a literature study, conducted interviews, held workshops and analysed examples of environmental and infrastructure policies. The main results of this research are set out in Part 1 of this advice.

While the Council was working on this Rli report the European Commission was preparing plans to make the European policy cycle more open and transparent and to improve the quality of policies and legislation. At the same time, the Ministry of the Interior and Kingdom Relations (BZK) was working with the regional and local authorities in the Netherlands to find a way to raise the level of their involvement in EU policymaking processes. In addition, the process of adopting the new Environment and Planning Act was progressing and the Ministry of Infrastructure and the Environment (IenM), together with the United Kingdom and Germany, developed initiatives to improve EU environmental legislation and make it more consistent and easier to implement, which resulted in the Make it Work project. Chapter 2 describes these relevant developments in more detail.

The case studies presented in this part of the report provide insight into how the political process works in practice and where friction arises during the preparation and implementation of EU legislation. The cases generally cover long periods of time as the process from policy initiative to implementation can take decades; and so procedures and practices should be seen in their historical context. In the meantime, lessons have been learned and experiences have led to major or minor amendments to

policies and to the way policy is developed and implemented. The case studies are intended primarily to identify where problems arose and what has been or could be learned from them. The case studies also reveal differences between policy areas.

The analyses were driven by the following questions:

- What creates tension between the different tiers of government regarding policy and legislation in the field of the physical environment?
- What strategies can the different government authorities and other stakeholders pursue in the European policymaking process to reduce these tensions?

The cases Rli selected to be analysed reflect three key themes within the Council's remit. The selected cases were also expected to deliver relevant results in the European context. The following three themes were investigated:

1. EU rules with consequences for Dutch area-based planning policy. A recent report by the Netherlands Environmental Assessment Agency (PBL) (Evers & Jenneskens, 2014) shows that almost the whole territory of the Netherlands is covered by one or more European policy frameworks. The Birds and Habitats Directives, the Water Framework Directive and other environmental directives all have spatial consequences. This theme is topical in view of the Fitness Check being made of the Habitats Directive, the Make it Work project and the run-up to the introduction of the Environment and Planning Act in the Netherlands.



2. Integrated transport policy. EU rules on the transport market – and public transport in particular – and their implementation in Dutch law have major consequences for the way public transport is organised in the Netherlands and how policy objectives are realised. At the European level there are currently two main issues surrounding public transport: liberalisation and technical and legal harmonisation.
3. Use of the EU Structural and Investment Funds. The EU, the Dutch government and the regional and local authorities are all involved in getting concrete projects off the ground with money from the Structural Funds. This theme is related to the Common Agricultural Policy/ Rural Development policy, in which cooperatives play an increasingly important role – thanks to Dutch efforts. A key issue is learning from experiences with more horizontal forms of governance and what that can mean for other policy areas relating to the physical environment. The focus in this theme is on the European Regional Development Fund, the European Agricultural Fund for Rural Development and the fund for European Territorial Cooperation (Interreg), which is important for cross-border cooperation.

Workshops

The three themes were elaborated in three workshops with experts from government, universities and research institutes, the business sector and civil society. The workshops were on the following topics:

- ‘Innovative initiatives in area-based policy require more latitude in European legislation for local interpretation’;

- ‘Making use of EU funds: learning from network governance’;
- ‘Trends in public transport: effects of liberalisation and harmonisation at regional and local level’.

The workshops produced interim results which were then tested in the case studies and the literature study. The result of the workshops supported the finding that European policy and legislation is made and implemented in a playing field that is much more complex than the formal decision-making procedures would suggest.

Who has influence, when, and how?

The analysis of the case studies follows the various stages in the preparation and implementation of EU policy (Kunst, 2013; European Commission, 2013; Ministerie van EZ, 2014c). The decision-making processes within and between the different tiers of government is an important aspect in each of these stages.

In the case studies we distinguish the following players, which vary from case to case:

- EU: the European Commission, the Council and the European Parliament; reference is also made to the Committee of the Regions (CoR) and the European Economic and Social Committee (EESC) as formal advisory bodies within the EU, as well as the Court of Justice and the European Court of Auditors;
- national government: the government, parliament, advisory bodies and ministerial departments;



- subnational government authorities: the provinces (Association of Provincial Authorities, IPO), municipalities (Association of Netherlands Municipalities, VNG) and water boards (Dutch Water Authorities, UvW) and their respective representative organisations in Brussels;
- civil society organisations, businesses and academia, and their representative institutions, associations and federations in Brussels.

When studying the cases, particular attention was given to a number of important aspects:

- Which stages can be identified in the whole policymaking process from agenda-setting at the European level to implementation at the regional level and reporting back to the European Union (see Box 1.1)?
- Which players are involved in the policy cycle and what role do they play in the different stages (see Box 1.2)?
- How does the negotiation and decision-making process unfold at and between the different tiers of government and between the various players?
- What are the critical moments in this complex policymaking arena for the decision-making process and the opportunities to exert influence, such as consultations, follow-up studies (impact assessments), evaluations and reviews?
- From what perspective² do the various players operate and does this perspective change from stage to stage?

² In this advice a political or administrative perspective is taken to be the way in which interests and values are identified and weighed up in the light of what is considered relevant or important at that level of government.

Box 1.1 Stages in the European policy cycle

EU decision-making

Agenda-setting and preparation (EU): Issues and topics can be raised in a number of ways: via citizens' initiatives spanning several Member States, by stakeholders via a request by a Member State (supported by other Member States), by the European Parliament or the Council, by European lobby groups, by the European Commission itself (work programme) or by one of the other European institutions. Products emerging from this stage are Green Papers (intended to stimulate debate and initiate the consultation procedure), White Papers and Communications (which propose new policy, often launching the preparation of new legislation) and concrete legislative proposals.

Negotiation (EU): Commission proposals are subject to discussion and negotiation between the European Commission, the Council and the European Parliament. This ultimately leads to the adoption or rejection of policy and legislation. Subsidiarity tests are performed by national parliaments and governments.

Elaboration (EU): the Commission often issues implementing rules or other guidance to accompany legislation adopted by the Council and Parliament. This can be done in various ways and can have consequences for the implementation of legislation.



Implementation in Member States

Transposition (EU → MS): In this stage the Member States must transpose the European rules into national law and adhere to the agreed rules.

Implementation (MS): Once the European rules have been enacted in national laws and regulations, its implementation may be delegated to regional or local authorities.

Reporting (region ↔ MS ↔ EU): Policy and legislation must be monitored, evaluated and enforced. Reporting on this process is made from the region to the national level and from the national level to the EU. An implementing arrangement or regulation may be amended on the basis of an interim evaluation or feedback.

Source: Kunst, 2013; European Commission, 2013; Ministerie van EZ, 2014c

The involvement of the various players in each of the stages is summarised in a highly simplified form in the table in Box 1.2.

Box 1.2 Involvement of players and tiers of government in each stage of decision-making

Stages in EU decision-making	EU	Member state	Subnational government authorities	Citizens and businesses
EU level				
Agenda-setting and preparation	EC, Member States, Council, EP	Influence and lobby through various channels and focal points	Input and lobby via channels and focal points	Input, consultation procedure and discussion
Negotiation and decision-making	EC/Council/EP in codecision; EESC/CoR advisory	Voting right	Contribution via meetings of officials and lobby via channels and focal points	Input, consultation procedure and discussion
Implementation	Determine framework	Voting right or lobby via channels and focal points	Contribution via meetings of officials or lobby via channels and focal points	Input, consultation procedure and discussion
National level				
Transposition	Feedback and approval by the EC	Powers	Contribution via meetings of officials	Consultation between national government, NGOs and industry
Implementation	Oversight by EC	Powers	Responsibility, feasibility test	Bargaining space: permits; citizen participation and contribution to projects
Monitoring, evaluation and reporting	EC	Reporting, enforcement	Reporting	Reporting, self-regulation



Choice of case studies

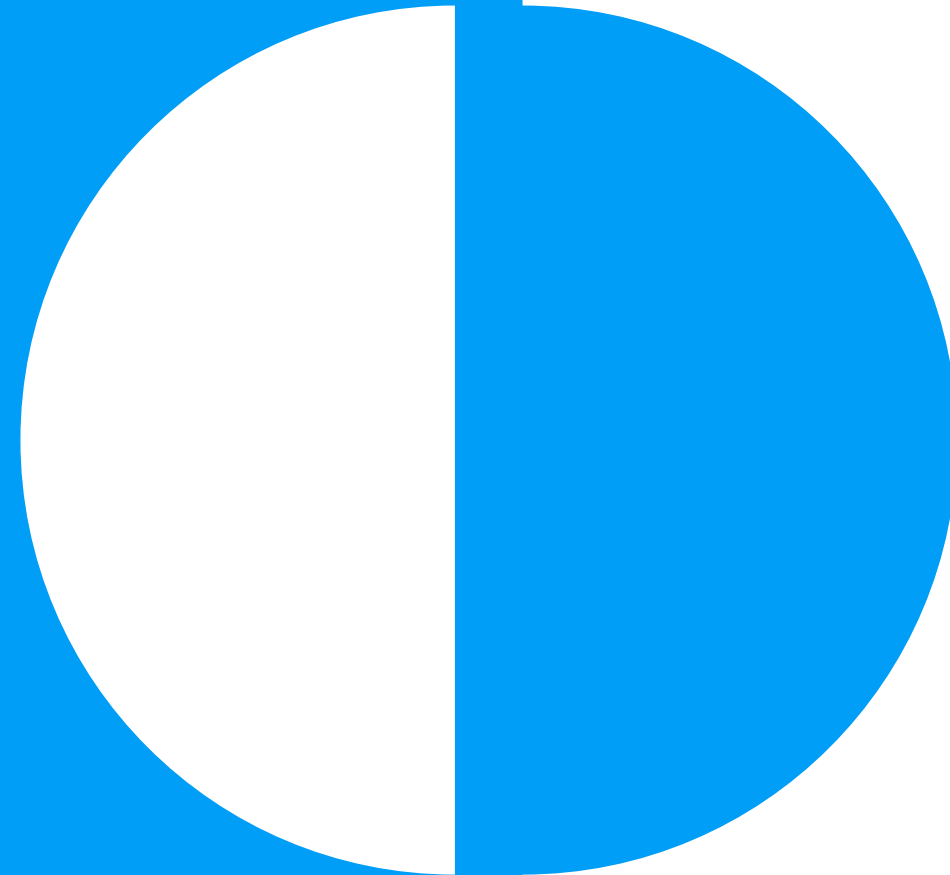
The cases differ from each other in a number of respects:

- precede EU legislation in preparation versus follow adopted EU legislation;
- a framework that allows room for interpretation versus strict legislation that offers little flexibility during implementation;
- many small players versus a small number of major players.

The following cases were studied:

- EU nature legislation: Birds and Habitats Directives / Natura 2000;
- The regulation of urban and regional transport markets;
- Water Framework Directive;
- The technical pillar of the Fourth Railway Package;
- European Structural and Investment Funds.





RECENT DEVELOPMENTS

European regulations on various aspects of the physical environment are currently undergoing a whole series of changes. The European Commission recently revealed its plans to make the European policy cycle more open and transparent and improve the quality of legislation in order to achieve better results (Better Regulation agenda, 19 May 2015). At the national level, the Ministry of the Interior and Kingdom Relations (BZK) is investigating how to get the regional and local authorities more involved in the decision-making on EU legislation in view of their changing roles and positions resulting from the decentralisation of various government tasks and responsibilities. Moreover, the House of Representatives has passed the new Environment and Planning Act, which takes an integrated approach to the built and natural environment to allow flexibility for local interpretation.

This chapter discusses recent developments within the same framework as that chosen for the analysis of the case studies: the stages of the European policy cycle, from agenda-setting and policymaking at the European level to transposition in national legislation and implementation at national level, and via reporting and evaluation back up to the European level. What are the most important (proposed) changes in each stage?

The lessons from the analysis of the case studies have been compared with the recent developments described in this chapter to identify pointers for the recommendations.

1. Short description of recent developments

Better Regulation agenda

Since the beginning of 2000 the European Union has been applying Better Regulation principles to ensure that new and existing EU legislation meets the test of proportionality, using the tools of consultations, impact assessments and evaluations.

Better Regulation is one of the Juncker Commission's priorities. The Better Regulation agenda, published on 19 May 2015 (European Commission, 2015a), contains the Commission's plans for delivering better rules for better results and more engagement from other stakeholders. It is not just about improving new and existing legislation, but also about making the European policy cycle more transparent and open to citizens and stakeholders. To promote this openness and transparency the Commission wants stakeholders to be able to express their views over the entire life cycle of a policy. The Commission also wants the European Parliament and the Council to commit to its Better Regulation proposals in the form of an inter-institutional agreement to be finalised before the end of 2015.

The Better Regulation agenda (European Commission, 2015a) covers the whole policy cycle and applies both to legislation and to additional, non-regulatory means to achieve the objectives of European policies. Principles, objectives, tools and procedures have been formulated for every stage of the policy cycle. These can be found in the Better Regulation Guidelines and the Better Regulation Toolbox, which address the planning



of policy, impact assessment, stakeholder consultations, implementation and evaluation. The Guidelines and Toolbox also discuss how the Better Regulation principles should be applied to the different forms of policy and legislation. They cover the preparation of new initiatives and proposals as well as making better use of existing policies and legislation.

What does the European Commission propose?

Better listening:

- consultation on new EU legislation (from the first to the final versions), on the evaluation of existing legislation, and on technical implementing legislation containing precise standards;
- advice from national parliaments on the need for the law.

Better explanation:

- broader justification and explanation of the purpose, necessity and effects of each initiative and piece of legislation;
- a 'have your say' website where people can say what irritates them about new and existing legislation.

Better legislation:

- attention to the environmental, social and economic impacts of legislation;
- exemption or a lighter regulatory regime for SMEs – the 'think small first' principle;
- a new Regulatory Scrutiny Board to critically review the impact assessments of legislation;
- a brake on amendments that make rules more complex.

Better cleaning out:

- broadening and intensifying the existing REFIT (Regulatory Fitness Programme) procedure for repealing legislation;
- 23 laws identified that can be repealed;
- a special platform for experts and stakeholders to make suggestions for improving EU legislation.

Improving inter-administrative cooperation in the EU policy cycle

Since the Ministry of the Interior (BZK) sent its policy vision on domestic government efficiency in Europe (*Binnenlandse Bestuurskracht in Europa*) to the House of Representatives in 2007, cooperation between central government and the regional and local authorities on the European policy cycle has improved greatly. The 'Europe and regional and local authorities' action plan (Europa en decentrale overheden), signed by the national government, the IPO and the VNG in 2008 (BZK, 2008), was evaluated in 2014 (BZK, 2014a, 2014b). The aim of the action plan was to identify the possible consequences of European policy for the regional and local authorities as early as possible in the European policymaking process to prevent unforeseen, undesirable or disproportionate side-effects of European rules on public services provided by the public regional and local authorities. The evaluation found that cooperation between officials on European policy issues has improved and the regional and local authorities are now more closely involved in the national coordination of European policy. This is reflected in the Code of Inter-administrative Relations (*Code Interbestuurlijke Verhoudingen*), which was updated in 2013. This code contains agreements on cooperation between the national government, the



provinces, the municipalities and the water boards, with a section on the European policy process.

However, in the inter-administrative consultative process it has been observed that the position of the regional and local authorities in the European policymaking process is still changing: the EU is a fourth tier of government that needs to be taken into account, but at the same time there is a process of decentralisation underway in the Netherlands. It was therefore decided to carry out a further study into cooperation between government departments, provinces, municipalities and water boards in 2014 and 2015. Consideration will be given to the desirability of amending the role of the regional and local authorities in policy areas that are heavily influenced by EU decision-making (De Lange et al., 2015).

University of Twente study

For the Ministry of the Interior (BZK) the University of Twente has investigated how, in relation to the European Commission's Better Regulation agenda and from the perspective of the Dutch regional and local authorities, decision-making on EU legislation, and thus the legislation itself, can be improved.³ The study looked mainly at the legal safeguards, instruments and procedures for ensuring that the decision-making process takes proper account of the interests of regional and local authorities.

³ The results of this research were also used as an input to the further study of inter-authority cooperation during 2014 and 2015.

Environment and Planning Act

On 1 July 2015 the House of Representatives passed the Environment and Planning Act, a reform of planning and environmental law that consolidates a large number of separate laws and regulations. It is expected that the Nature Conservancy Act recently passed by the House of Representatives will eventually also be incorporated into the Environment and Planning Act. The government's reasons for introducing the new Act are:

- to increase the transparency, consistency and ease of use of environmental and planning law, including a reduction in the regulatory burden;
- to underpin a comprehensive and coordinated policy, decision-making procedure and regulatory framework for the physical environment;
- to broaden the scope for balancing conflicting interests by enabling an active and flexible strategy for achieving the policy objectives for the physical environment;
- to speed up and improve decision-making on planning and environmental projects.

The Environment and Planning Act also enacts various EU directives on the physical environment that were transposed into the laws consolidated in the new Act. Under the new Act, the national government and provinces must draw up Environment and Planning Visions for the physical environment that set out the strategic framework for their integrated environmental and planning policy.



Make it Work

Several Member States are interested in the step the Netherlands has taken in integrating its legislation for the built and natural environment. Together with the United Kingdom and Germany, the Netherlands has launched a project called Make it Work to make European environmental legislation more coherent and simpler to implement (IEEP, 2014). As such, it supports the European Commission's Better Regulation initiative. Make it Work seeks to build on cross-cutting themes within EU directives (such as a more coherent and consistent framework for standards, plans, licensing, reporting, monitoring and inspection protocols) because the growing desire at the national and regional levels for integrated legislation and policy stands in stark contrast to the sectoral EU policies, which are sometimes inconsistent and frustrate integrated approaches by Member States. Make it Work has therefore formed a coalition with the European Commission and several Member States to develop drafting principles on these cross-cutting themes for use by the EU institutions when drafting new directives and regulations and revising existing EU rules. The overall goal is to obtain better environmental outcomes through the use of more efficient instruments, without lowering existing EU environmental protection standards (Make it Work, 2015).

Reflection:

- There is a demand at the European level and among Member States for EU directives and regulations that are better attuned to the challenges on the ground. Developments at the national level are characterised by a more integrated approach, whereas the key concern at the European

level is the need for openness and transparency for stakeholders. These developments can be mutually reinforcing.

- In the near future experiences with the integrated Environment and Planning Visions to be prepared by the Dutch government and the provinces under the Environment and Planning Act may be a source of inspiration for the Dutch input to evaluations, Fitness Checks and the development of new European policy and legislation.
- The European Commission's stakeholder approach may provide opportunities for improving the transposition of European directives into national law.

2. Agenda-setting and preparation

Better Regulation agenda

Agenda-setting

The European Commission's political priorities and work programme form the basis for putting policy topics onto the agenda. Before a start can be made with the preparation of policy, new initiatives and evaluations must receive political approval (validation). Once a topic is validated, a Roadmap or an Inception Impact Assessment is drawn up. Proposals with potentially significant economic, ecological or social impacts must undergo an impact assessment. Inception Impact Assessments set out in greater detail the description of the problem, the issues related to subsidiarity, the policy objectives and options, and the likely impacts of each option. Roadmaps are prepared if an impact assessment is not needed. Each Roadmap

or Inception Impact Assessment contains information on the planned stakeholder consultations and states how the stakeholders will be given the opportunity to provide input. The consultation strategy identifies the relevant stakeholders so that all relevant evidence and opinions can be collected. The stakeholders should also be informed about what will be done with the information and opinions they provide.

Preparation process: from agenda-setting to Commission proposal

Proposals by the Commission for policies and legislation with potentially significant economic, ecological or social impacts must be accompanied by an impact assessment. This is an iterative process: the problem description, the degree of subsidiarity, the objectives, the possible policy options and the impacts of these options are investigated and assessed. In preparing these impact assessments the Commission can make use of targeted consultations, consult experts, etc. The preparatory stage is concluded with the approval of the proposal by the European Commission. Following this approval, the Commission's proposal is sent to the European Parliament and the Council. The proposal is accompanied by a report of the outcome of the stakeholder consultations, the impact assessments, implementation plans and, for legislative initiatives, an explanatory memorandum in which the Commission indicates how the proposal satisfies the principles of subsidiarity and proportionality and the Better Regulation principles.

Improving inter-administrative cooperation in the EU policy cycle

The study by the University of Twente (De Lange et al., 2015) points out that informal influencing is an important part of the agenda-setting stage

and is formally enshrined in the Treaty obligations (Article 11, Treaty on European Union). The regional and local effects of Commission proposals have so far only been touched upon in impact assessments and the study proposes that any additional tasks accruing to the regional and local authorities from Commission proposals as well as the costs of those additional tasks should be made explicit. This should be done in parallel with the impact assessment procedure, well before decision-making takes place in Brussels. The case studies also show that so far little attention has been paid to possible regional and local effects, especially in the preparatory stage of policymaking. De Lange et al (2015) argue that proper consideration of potential local and regional effects at Member State level would be useful to flag up beforehand any potential stumbling blocks in the implementation.

In the Code of Inter-administrative Relations for subnational authorities, national, regional and local government have agreed to involve the regional and local authorities in the European policymaking process at the earliest possible stage. The code was amended on this point in 2013 (see Box 2.1).



Box 2.1 Code of Inter-administrative Relations (*Code Interbestuurlijke Verhoudingen 2013*), section on Europe

Article 9 of the code states that the principle is that agreements with regional and local authorities on national policies also apply, *mutatis mutandis*, to European policy issues. The national government and the regional and local authorities will therefore consult with each other at the earliest possible stage in the policymaking process to assess the administrative and financial consequences (including administrative burdens) of new EU policy initiatives for the provinces, municipalities and water boards. Where EU policy proposals have consequences for the regional and local authorities, these authorities and the national government will explore the possibilities for cooperation at the earliest possible opportunity. They will work on these policy initiatives in all stages of the policy cycle (preliminary stage, negotiations and implementation), where possible jointly (e.g. in inter-administrative portfolio teams) and make use of each other's networks. The regional and local authorities and the national government retain the option of acting independently.

The national government and the regional and local authorities will consult with their members and bring to bear their own specific fields of expertise, and will exercise confidentiality with respect to shared information. The regional and local authorities will make active use of their membership of the Dutch EU consultation forums.

The financial and administrative consequences of European legislation for the regional and local authorities should be identified by the national government before they are due to be implemented.

Source: BZK, Code Interbestuurlijke Verhoudingen, 2013

The regional and local authorities have other opportunities for making an input to the European policy cycle besides their agreements with national government. One route is via the CoR, in which the regional and local authorities are represented by their organisations in Brussels. The Commission also seeks direct contact with the regions and cities outside the CoR, for example in relation to the Structural Funds and the 'Juncker Fund' (European Fund for Strategic Investment, EFSI).

Reflection:

- Research shows that inter-administrative agreements may look good on paper, but their implementation requires constant vigilance. The current agreements can be reviewed against the principles of the Better Regulation agenda and amended or supplemented where necessary. Again, only experience will tell whether they work well or not. The best practices from the University of Twente study provide a good springboard for an improved approach across national government.
- The preparatory stage of legislative initiatives is crucial. The amended procedure to be followed by the Commission makes it possible to strengthen the strategic and agenda-setting aspects of the consultations



between the national government and the regional and local authorities. This in turn makes it possible to intervene earlier in the process, at both the European and national levels, on issues like what the Dutch government wants to achieve (vision, strategy), where the opportunities can be found, possible problems, etc. The Ministry of Infrastructure and the Environment has an internal consultation process in which it addresses questions like these. It may be useful to deploy these best practices across the whole of government.

3. Negotiation and adoption

Better Regulation agenda

When the European Commission makes a proposal, the European Parliament and Council discuss it and negotiate the decision to be taken. In this stage stakeholders are again given an opportunity to make their views known on the proposals, the accompanying impact statements and the implementation plans. The Commission collates the results of these consultations and makes them available to the European Parliament and the Council.

Impact assessments

Impact assessments are tools in the policy and decision-making process. An impact assessment gathers and analyses information to support the decision-making process. It examines the problem in more detail: what exactly is it, what are the underlying causes, is action needed by the EU and what are the pros and cons of the possible solutions? The purpose

of impact assessments is to improve the empirical basis and reasoning in the policymaking process, leading to better legislation: legislation with maximum effect at minimum cost that meets the principles of subsidiarity and proportionality.

Implementation plans

Proposals for important directives must be accompanied by an implementation plan which describes implementation challenges and relevant supporting actions to be taken by the Commission to address those challenges. Impact assessments and stakeholder consultations are essential for preparing a good implementation plan.

Each policy option in the proposal should be clearly analysed: what problems or issues could arise during implementation by the Member States, regional or local governments or implementing agencies? The efforts of those addressed by the policy, directive or regulation, or who must meet its requirements, and the efforts to be made by the public authority responsible for implementing it must be carefully weighed up. An important source of information for this evaluation are previous evaluations of implementation problems with related legislation.

When carrying out the stakeholder consultations it is important to take full account of the positions of the public authorities that will be responsible for implementing the policy. The aim is to ensure that relevant experience of implementation and expertise is gathered and used when developing the proposal. This means that preparing an implementation plan begins



with an assessment of the challenges facing the Member States when transposing EU directives into national legislation.

Explanatory memorandum

The purpose of an explanatory memorandum is to explain the Commission's proposal, paying particular attention to the Better Regulation principles (subsidiarity, proportionality, the outcome of consultations, impact assessments, the implementation plan, etc.).

Other aspects to be included in the proposals

A starting date must be fixed for the introduction of the legislation (1 January or 1 July). A sunset clause may also be included to prevent legislation from remaining in force for an unnecessarily long period of time. A sunset clause sets an 'expiry date' for a regulation or law, or the date when a decision has to be made on whether it should be continued or not. Every legislative proposal must also be accompanied by a description of how it is to be evaluated.

Improving inter-administrative cooperation in the EU policy cycle

Dutch positions on new proposals by the European Commission are prepared in an 'Assessment of New Commission Proposals' or BNC brief (*Beoordeling Nieuwe Commissievoorstellen*) drawn up in consultation with government departments, regional and local government associations and representatives from industry and civil society, and debated in parliament. The BNC Working Group of civil servants assesses not only Commission proposals, but also other publications relevant to policy, such

as Communications, Green Papers and White Papers. This committee is chaired by the Ministry of Foreign Affairs and consists of representatives from all ministries, the IPO, the VNG and the Association of Regional Water Authorities (Unie van Waterschappen). The Coordinating Committee sends the BNC briefs to the Council of Ministers (the Dutch Cabinet), which then submits them to the Senate, the House of Representatives and the Dutch members of the European Parliament. This must take place within six weeks of the publication of a Commission proposal. Inter-administrative portfolio teams are responsible for monitoring and responding to the subsequent progress of Commission proposals through the European policy cycle. The Ministry of Infrastructure and the Environment is particularly consistent in its participation in this process, but the other departments take a more ad hoc approach.

University of Twente study

Although a BNC brief identifies potential implementation problems and other issues for the regional and local authorities, De Lange et al. (2015) argue that this does not mean the effects of the proposal on the regional and local authorities are all fully described, because the time frame within the which the BNC briefs have to be prepared would appear to be too short to accomplish this.



Box 2.2 BNC brief (Assessment of New Commission Proposals)

1. General information (including title, date of receipt, ministry with primary responsibility)
2. Summary of the BNC brief
3. Summary of the proposal
4. Determination of jurisdiction and judgment on subsidiarity and proportionality
5. Financial implications, consequences for the regulatory and administrative burden
6. Legal implications, including for national legislation and regional and local ordinances and bye-laws, and the advisability of evaluation requirements or a sunset clause
7. Implications for implementation and enforcement
8. Implications for developing countries
9. Dutch position

The University of Twente report says that the Ministry of Infrastructure and the Environment has established inter-administrative portfolio teams for all the relevant proposals, but that the Ministry of Economic Affairs has established teams in only a few cases. Successful cooperation between the ministries and the regional and local authorities depends on sharing and using each other's expertise and networks. This gives the national government insight into the consequences of EU proposals at the regional and local levels, which helps when preparing a well-considered Dutch standpoint on enforceable EU rules and is important for its effective and

efficient implementation in national law. The national government and the regional and local authorities have various networks at the European level which are useful as sources of information and for disseminating Dutch standpoints.

Reflection:

- The Better Regulation agenda provides several points of leverage for the negotiation stage. The regions should make full use of the opportunities for consultation on Commission proposals and carefully consider the accompanying impact assessments and implementation plans. Thorough preliminary work in the preparatory stage can provide a solid foundation for the input to this stage. The time frame for the consultation is shorter in this stage.
- The European Commission's Roadmap or Inception Impact Assessment produced in the preparatory stage describes the initiative it is taking, what ideas it has, the pathway from proposal to adoption, implementation and reporting, and when stakeholder consultations will be held. This means that the national government and the regional and local authorities will have to be more alert in their coordination meetings to identifying what proposals are coming up and what can be done in the Netherlands by way of preparation.
- The BNC brief appears to be more of a conclusion to the whole process, including the preparatory work in the rest of the country. Involvement of the regional and local authorities in drawing up the BNC briefs will help to improve the flow of information, but the limited time available leaves little opportunity to exert any real influence.



4. Elaboration of EU legislation: Delegated Acts and Implementing Acts (stage 3)

Better Regulation agenda

One of the changes under the Better Regulation agenda is the holding of stakeholder consultations during the whole policy cycle. This means that the Delegated Acts and Implementing Acts drafted by the European Parliament and Council following the adoption of the Commission proposal are, with a few exceptions⁴, open to stakeholder consultation. For each of the Commission's proposals, the entry in the Agenda Planning must indicate whether or not a stakeholder consultation will be held on the Delegated Acts and Implementing Acts.

Improving inter-administrative cooperation in the EU policy cycle

The texts of directives are drafted by technical working groups and expert working groups. Member States can send their own experts to sit in these working groups. The study by the University of Twente concluded that it is very important for the Dutch regional and local authorities to be involved in the rounds of targeted consultations (expert groups). In addition to these consultations, the open consultations enable a much broader range of representations to be made. The analysis also revealed that in some cases (for example, the Water Framework Directive) directives for the implementation of rules are amended during the process as a result of experiences in the Member States. It is important that regional and local

authorities are informed of such developments. The inter-administrative portfolio teams have a key role to play in this, because expertise and experience with other or related legislation can be useful for identifying potential difficulties with implementation.

Make it Work

Make it Work is an initiative by the Netherlands and the UK in which several Member States are working to make EU environmental law more coherent and consistent, within the existing framework of agreed policy and levels of environmental protection. It brings together all the various initiatives in the Member States to improve the quality of legislation as well as the European Commission's own initiatives. The results of the project will be presented in the form of guidance documents. Major inputs into this process include experiences in the Netherlands with improving the quality of legislation, such as the Simpler and Better programme (*Eenvoudig Beter*) and the preparation of the Environment and Planning Act.

Reflection:

The study by the University of Twente underlines the importance of participation by the regional and local authorities in the drafting of legislation in the expert groups. As directives are increasingly taking on the form of framework directives, this stage will become more important. To make optimal use of the experience and expertise in the region during this stage, it may be advisable for the Commission's proposal to be open to amendment and elaboration in the light of past experiences or anticipated problems in the Member States.

⁴ For the exceptions see the Better Regulation Guidelines, Chapter VII, 4.1, p. 67.

5. Transposition into national policy and national law

Better Regulation agenda

The European Commission oversees the transposition of EU legislation into national law by the Member States and draws up implementation plans (see section 2.3) to facilitate the prompt and effective application of EU legislation by the Member States.

Improving inter-administrative cooperation in the EU policy cycle

Regulations approved by the European Parliament and the Council are legally binding on national, regional and local governments. Directives set out policy or objectives that must be enacted in national law (either new or amended) within a certain period of time. This national legislation is legally binding on the Dutch regional and local authorities. Directives that are limited to setting specific objectives or targets give national governments more latitude in deciding how to achieve those objectives or targets.

In the Netherlands since 2011 new national laws and amendments to legislation implementing EU rules are drawn up on the basis of the outcome of an integrated assessment (*the Integraal Afwegingskader*) (see Box 2.3). Advice is also given by Actal, the Dutch advisory board on the regulatory burden.⁵ The aim is to ensure that the legislation incurs the minimum of costs and reduces the regulatory burden for all stakeholders.

⁵ Actal advises the government and parliament on how to minimise regulatory burdens for firms, citizens and professional workers in healthcare, education, safety and welfare.

This includes clearly identifying the consequences for the regional and local authorities.

Box 2.3 Every policy or legislative proposal is assessed against seven main questions (Integrated Assessment Framework for Policy and Regulation, IAK)

1. What is the reason for the proposal?
2. Who are the stakeholders?
3. What is the problem?
4. What is the goal?
5. What is the justification for government intervention?
6. What is the best instrument?
7. And what are the consequences?

The integrated assessment was amended in 2013 to revise the criteria for consultation and transparency. At the moment it contains 16 mandatory quality standards set out in various policy documents, including the feasibility and enforceability test, which also has a local and regional component, and the assessment framework for inter-administrative relations. The answers to the integrated assessment questions are not written down in a report, but it should be clear from the draft legislation and explanatory memorandum that the questions have been adequately answered. The government does publish a summary of the outcome of the integrated assessment when internet consultations are held on proposed legislation.

The University of Twente observes that despite the various quality standards, the additional tasks falling to the regional and local authorities and their associated costs are not always properly considered and recommends that the integrated assessment framework include more explicit guarantees on the cost and policy discretion aspects for the regional and local authorities. Due consideration should also be given to the proportionality of such guarantees.

Reflection:

At the national level the formal guarantees regarding the influence of regional and local authorities have been considerably strengthened, among other things by the Code of Inter-administrative Relations. However, one aspect that deserves more attention is the requirement in the code that the financial and administrative consequences of European legislation for the regional and local authorities should be identified before its implementation by national government. This applies both to the preparation of the Dutch position (in outline) on European proposals and to the integrated assessment framework.

6. Implementation at national and regional level

Better Regulation agenda

For the Commission, good implementation also involves monitoring of the application of legislation in practice to see whether or not it achieves its goals. This monitoring should also highlight where the legislation

is not working as intended so that it can be amended accordingly. This monitoring should take place at both the national and the European level.

In the Better Regulation Guidelines the Commission says it may decide that a ‘soft’ policy instrument is preferable to a pure legislative approach. Examples of such instruments are voluntary agreements or other forms of self-co-regulatory action (see Better Regulation Toolbox, Tool 15, page 86). In such cases, there will also be a need to monitor the performance of such approaches against the underlying policy and legislative principles, the commitments made by the parties and the objectives of the initiative.

Environment and Planning Act

The Environment and Planning Act is intended, among other things, to underpin a comprehensive and coordinated policy, decision-making procedure and regulatory framework for the physical environment. It also aims to broaden the scope for balancing conflicting interests by enabling an active and flexible approach to achieving the policy objectives for the physical environment. Several orders in council will be issued to set down detailed specifications of standards and similar regulations. One of the reasons this route has been chosen is that it allows the government to respond more quickly to EU directives and revisions of directives, because the Act itself will not have to be revised. When seeking the right balance between protection and development under the Environment and Planning Act due consideration should be given to several dimensions: government – society, sectoral – integral, decentralised – centralised and legal certainty



– flexibility. These dimensions are also important in the implementation of the Environment and Planning Act and the detailed application of guidance in the orders in council (Rli, 2015).

During the debate on the Environment and Planning Act in the House of Representatives a number of amendments were submitted which in the opinion of the IPO would only serve to make the law unnecessarily complicated, because they do not help to make planning and environmental policies better and simpler to implement in practice. In connection with this, the IPO points⁶ to the harmonious working relationship it has had with the Ministry of Infrastructure and the Environment for the past four years and to the Code of Inter-administrative Relations. The code contains agreements between the national government, the provinces, municipalities and water boards on cooperative working in which each tier of government can fulfil its responsibilities. The code also requires government authorities to consult with each other on the development of new policies and to ensure a quick resolution of problems at other administrative levels (IPO, 2015).

⁶ IPO (2015) *Behandeling wetsvoorstel Omgevingswet*, Letter of 4 June 2015.

7. Reporting: monitoring, evaluation and feedback

Better Regulation agenda

Monitoring

Monitoring is an essential and integral part of the Better Regulation agenda. It can be used to check whether or not policies are performing in practice as intended, identify any implementation problems and decide whether further action is needed to ensure that policy objectives can be met. The key questions in monitoring are what evidence must be collected, when and how should it be collected, who should collect it, and who should provide it? It is important that monitoring is 'proportionate', that there is minimum overlap (or effective coordination) between the monitoring systems of the various governance levels (EU, Member States, and implementing agencies) and that the evidence gathered is made available to the general public.

Evaluation

The Commission stresses the importance of evaluations and Fitness Checks during the preparation of policy. In addition to the forward looking impact assessments, retrospective evaluations are also of great value. Both should take an integrated approach that examines impacts on various aspects of sustainable development: the economic, ecological and social effects of the implemented or proposed policy. Evaluations collect information on the extent to which a policy has led to the intended outcomes and what, if any, unintended or unexpected effects have occurred. They also assess



the internally consistency of policies, their performance in relation to other policies, and their added value (if any) at the EU level.

Evaluation serves various purposes. It supports decision-making, aids strategic planning and the design of future policy and legislation, facilitates mutual learning (best practices) and helps to identify unintended and unexpected effects of policy. Evaluation also makes a contribution to the openness and transparency of EU policies.

Improving inter-administrative cooperation in the EU policy cycle

The University of Twente concludes that until now the routine evaluations of EU legislation have had little effect in getting implementation problems onto the agenda. On this score, there is room for improvement in the conduct of these evaluations, which could also help the Dutch regional and local authorities.

Implementation problems can also be caused by national legislation enacting EU rules and evaluation is not always given sufficient attention at the national level (De Lange et al., 2015). Information on problems with legislation could also be obtained from reports by Europa Decentraal, a knowledge centre that provides assistance to the provinces, municipalities and water boards on the implementation and application of EU directives. The centre maintains an informative website (www.europadecentraal.nl) and has a large database of questions raised and problems encountered. De Lange et al. point out that the CoR could also play a greater role in gathering information on the implementation of EU legislation and

informing the Commission of any problems. The CoR does not currently consider this to be one of its tasks.

Reflection:

- The Europa Decentraal knowledge centre provides valuable support to regional and local government and because of its monitoring task possesses a wealth of information on implementation problems. This information is not currently shared with the European Commission in a structured manner, but this would be desirable given the value of feedback for informing the agenda-setting process.
- Monitoring and evaluation are an important part of the Commission's Better Regulation agenda. The Commission clearly states that monitoring should be proportionate and there should be no overlap with the monitoring systems of other bodies. Evaluation supports decision-making, aids strategic planning and the design of future policy and legislation, facilitates mutual learning (best practices) and helps to identify unintended and unexpected effects of policy. The Commission's proposals are less explicit about auditing and reporting requirements.

Closing remarks

The following chapters present the case studies. These case studies are good examples of what the University of Twente considers to be the most problematic EU legislation for the regional and local authorities. The study by this university, Europa als kans: Better regulation (Europe as an opportunity: Better Regulation for Dutch subnational authorities), identifies the following EU legislation as being expensive or obstructive:



public procurement rules (important for the regulation of urban and regional public transport), state aid rules (relevant for the implementation of Structural Funds, for example, but is not explicitly discussed here), the Birds and Habitats Directives (Natura 2000), the Water Framework Directive and the Structural Funds (ERDF) (De Lange et al., 2015). The results of this study were not available when these cases were selected and studied.





EU NATURE
LEGISLATION: BIRDS AND
HABITATS DIRECTIVES /
NATURA 2000

The cornerstone of European nature policy is Natura 2000, a coherent network of more than 25,000 protected areas in the territory of the EU with the purpose of protecting vulnerable animal and plant species and their habitats. The legislative basis for Natura 2000 comprises the Birds Directive (1979) and the Habitats Directive (1992). Biodiversity was high on the European and international political agendas when these directives were prepared (in Europe, the 1979 Bern Convention and the Emeralds network in 1989, and internationally the 1992 Convention on Biological Diversity).

1. Agenda-setting and policy preparation

Leading role by the Netherlands in the preparing the Habitats Directive and the Natura 2000 concept

The Netherlands was a highly active and ambitious player in the development of the Habitats Directive in particular. Between 1988 and 1992 Dutch representatives in Brussels lobbied hard to get the idea of an ecological network – which had become Dutch policy in 1990 in the form of the National Ecological Network (the Ecologische Hoofdstructuur in Dutch) – onto the European agenda. According to Van Keulen (2007), there was considerable support for a European nature policy among national government representatives, European institutions and green NGOs until the end of the 1990s. The adoption of the Habitats Directive was one of the priorities of the Dutch government during the Dutch presidency of the EU in the second half of 1991 (Boer et al., 2011; SER, 2006; Van Keulen, 2007; Van Rheenen et al., 2005; Neven et al., 2006).

Reflection:

The Dutch concept of the National Ecological Network made a significant contribution to the establishment of European nature policy: Natura 2000 and the Habitats Directive. In turn, European legislation has strengthened the legal status of Dutch nature policy as amendments to the Dutch policy have to be approved at the European level as well as by the national parliament.

2. Decision-making and adoption of policy

When the Habitats Directive was adopted by the EU (July 1992), the date when it had to be transposed into national legislation was set at June 1994. The directive contained obligations for its transposition into national law and deadlines for the submission and approval of the national lists of proposed protected areas (1995 and 1998) and for reporting on the implementation of the directive (every six years, starting in 2000). The first European report on the implementation of the directive in the EU was published in 2002.

No thought given to possible problems with implementation

At first the Netherlands expected there would be few problems with the implementation of the Habitats Directive and Natura 2000, because the underlying principle was based on existing Dutch policy.

In its advice on how the Netherlands approaches EU environmental directives (SER, 2006) the Social and Economic Council of the Netherlands (SER) stated that Dutch input to negotiations on these directives is

determined to a large degree by the views of the government department with prime responsibility. The SER argued that taking a perspective shaped by a single policy area had adverse consequences for the decision-making on and implementation of environmental directives.

Reflection:

- The upgrading of Dutch nature policy into EU legislation (Habitats Directive and Natura 2000) did not proceed without problems. In the policy adoption stage too little attention was paid to the consequences of EU legislation for national laws.

3. Transposition of EU policy and directives into national policy and legislation

Initially the Netherlands was in no hurry to submit its list of Natura 2000 sites because it was felt that with its National Ecological Network it was already working ‘in the spirit of the Birds and Habitats Directives’ (IBO, 2003; Arnouts and Kistenkas, 2011), not only for the transposition into national legislation and translation into concrete policies, but also for the provision of information on its implications. According to Neven et al. (2006), the heavy involvement of the Netherlands in the establishment of the directives appeared to give the government the idea that its own policy had been successfully upgraded to the European level. For a long time the government assumed that the existing protected areas in the Netherlands

and Dutch legislation⁷ would cover most of its obligations under both directives (IBO, 2003).

The poor continuity in expertise between the various stages in the policymaking process and the uncertainties and controversies surrounding the interpretation of important concepts in the directives (‘significant effect’, ‘necessary measures’ and ‘imperative reasons’) also contributed to the problems that later arose with the implementation of the nature conservation legislation (Van Keulen, 2007).

Juridification of decision-making and poor use of the provisions of the directives

In 1998 the Court of Justice of the European Union ruled that the Netherlands had failed to properly implement the directives (designating sufficient special protection areas for birds). In 2000 the European Commission sent a letter to the Netherlands saying that it had not properly transposed Article 6(3) and Article 6(4) of the Habitats Directive into national law. The SER (2006) points out that the late transposition of the directive into the necessary statutory and administrative provisions led to a juridification of decision-making. Instead of making use of the assessment framework provided by Article 6 of the Habitats Directive to weigh up different interests, it was applied directly, which meant in the initial years implementation of the directive was largely via the courts. The many appeal cases before the Council of State led to the rapid uptake

⁷ Such as the Nature Conservancy Act, the incorporation of the National Ecological Network into the National Structure Plan for Rural Areas and the establishment of management agreements.

of a European decision-making process based on a strict precautionary principle into the Dutch legal system. The Netherlands was not alone in this; few Member States escaped being called before the European Court for failing to properly implement the Birds and Habitats Directives (Boer et al., 2011; Haije, 2011; Beunen & Bouwma, 2013).

Transposition into national legislation

The new Nature Conservancy Act incorporating the Natura 2000 policy came into force in 2005. This law contains provisions for designating Natura 2000 sites, protecting the designated sites and determining the types of activities that are permissible in and around Natura 2000 sites (Habitat assessment). When the Nature Conservancy Act was revised, at the request of the House of Representatives the provinces rather than the municipalities were made responsible for issuing permits and drawing up management plans containing the conservation measures.

The species protection aspects of the Habitats Directive were implemented through an amendment to the Flora and Fauna Act in 2002. The Flora and Fauna Act was originally intended to provide a stricter protection regime than the Habitats Directive, and this remained partly in place after 2002. Over the years the restrictions imposed by the Act have been relaxed several times because in practice it imposed too many constraints on existing land use and management activities (especially in agriculture, forestry, construction and recreation).

Mismatch between legislation and management practices

Various studies of the implementation process have shown that the problems were caused mainly by uncertainties surrounding the content, interpretation and practical application of the legislation. This uncertainty was found at all levels: the regional and local authorities were often not fully aware of the content of the directives, and at the European level there was no clear and unambiguous explanation of several crucial concepts, such as 'appropriate assessment' and 'significant effect' (e.g. Neven et al., 2006; SER, 2006; Van Keulen, 2007; Van Rheenen et al., 2005). Not only were some key concepts rather vague, but there was also confusion about the assessment in relation to 'existing use', about the application of the precautionary principle to the requirements for maintenance, and other matters. Over time the mismatch between the legislation and management practices and the continual conflicts of interest led to a mounting number of uncertainties, delays, and complex and expensive legal proceedings (Arnouts & Kistenkas, 2011).

Nevertheless, the meanings of these all important concepts for Natura 2000 eventually began to crystallise. At the European level several guidance documents were produced on the application of the EU rules, such as handbooks on the use of the protection regime for Natura 2000 sites and for species of European importance. However, terms like 'significant effect' and 'external impacts' continued to cause problems, especially in relation to nitrogen deposition from agriculture. More recently, the Ministry of Economic Affairs worked with various stakeholders to develop and introduce the Nitrogen Reduction Programme (*Programmatische*



Aanpak Stikstof, PAS)⁸ and via the Crisis and Recovery Act 2010 the Nature Conservancy Act has been amended to permit a separate nitrogen regime.⁹

Reflection:

- The fact that the Netherlands did not realise what the full impact of the Birds and Habitats Directives would be seems to be due at least in part to the difference between the make-up of Dutch policy for its National Ecological Network (NEN) and the implications of Natura 2000: the NEN is based on a spatial protection regime which allows more room for weighing up different interests and providing compensation than the Natura 2000 policy in the Birds and Habitats Directives.
- The limited interest in the implementation process of the Habitats Directive, on the assumption that Dutch policy covered all the bases, led to several clashes with the EU over the Nature Directives. This considerably tarnished the reputation of the Netherlands established during the development stage as a successful frontrunner in European nature policy.
- Decisions by the Court of Justice of the European Union in infringement proceedings against the Netherlands and the threat of new infringement proceedings have gradually brought the Netherlands into line with European policy.

⁸ This seeks to reduce overall nitrogen deposition levels by means of a spatial differentiation in levels across the management plans to allow new development in certain areas.

⁹ A new Article 19ia of the Nature Conservancy Act states that in 'standstill' situations, where there is no increase in deposition, nitrogen deposition may be excluded from the assessment for a new permit under the Act.

4. Implementation at national and regional level

The Natura 2000 policy has been incorporated into the Nature Conservancy Act. This law contains provisions for the process of designating Natura 2000 sites, the protection of the designated sites and the determination of the types of activities that are permissible in and around Natura 2000 sites (Habitat assessment).

Designation of sites

The implementation of Natura 2000 policy starts with the submission of proposals for sites to be designated as protected areas. Member States select a number of sites with specific natural values listed in the directive. The proposed sites must then be approved by the EU, after which the national government can proceed with the formal designation of the sites. When reviewing sites for approval the EU refers to a 'shadow list' of potential sites of conservation value in Europe drawn up by nature conservation organisations in the various Member States united in the European Habitats Forum (Princen, 2014). Once the sites have been formally designated they fall under the protection regime for achieving the objectives of the Birds and Habitats Directives (comparable with the Dutch NEN).

After the judgment by the Court of Justice in 1998, the Netherlands made haste to designate more areas. By 2000 the Netherlands had notified more than 100 protected areas to the European Commission, but the Commission was still not satisfied. The eventual list of 162 Natura 2000 sites was submitted in 2003 and in 2004 these sites were entered into the

list of Sites of Community Importance. In 2009 four additional marine sites in the North Sea were submitted, bringing the total number of Natura 2000 sites in the Netherlands to 166. Designations orders have to be made for each of the proposed sites, indicating the boundaries of the site and the ecological values to be protected. These are discussed with the provinces, municipalities, water boards and civil society organisations. Almost all the Natura 2000 sites have now been formally designated.

The process from selection to final designation of the Natura 2000 sites was marked by various conflicts (Bouwma et al., 2010), mainly about the information and communication process surrounding the initial selection of sites, the criteria for defining the boundaries of sites and the historical connections between nature conservation/protected areas and existing land uses.

Conservation objectives

The Dutch national Natura 2000 objectives document (Ministerie LNV, 2005) was drawn up on the basis of the available data and consultations with experts and conservation management organisations. The draft objectives document was discussed with the provinces and other government authorities; civil society organisations, economic sectors and other stakeholders were also consulted. The objectives document sets out the parameters for the designation orders for Natura 2000 sites and the preparation of management plans.

Management of Natura 2000 sites: differences between Member States

The Habitats Directive does not make it mandatory to work with management plans, but mentions them as a means to establish the necessary conservation measures. A Member State can therefore itself decide whether management plans should be prepared or other management instruments used. A minority of Member States, including the Netherlands, France and Denmark, have decided to set up a separate management plan process for their Natura 2000 sites (Bouwma et al., 2010).

Preparation of management plans (site protection, habitat assessment, existing and new uses)

Under Dutch legislation, once sites have been designated, plans for their management should be drawn up. A start was made with this process in 2007. The national government is responsible for the sites to be managed by government departments or agencies (Ministry of Defence, Rijkswaterstaat (public works and water management), and Staatsbosbeheer). The provinces are responsible for the other sites. The management plans are drawn up by working groups of representatives from various stakeholder groups. The content of the plans is subject to a set of concrete requirements, but there are no procedural requirements (Beunen & Bouwma, 2013). The responsible government authorities can elect to have one or more management plans for a site, or draw up a single management plan for several sites. The management plans must state what measures are necessary to protect the ecological values and habitats in the sites and who will be responsible for carrying them out.



The measures must be feasible and affordable actions for the conservation and restoration of ecological values. The management plans also state what is permitted and what is prohibited in the sites and how the various interests in the land can best be combined with the conservation objectives. The plans are adopted following a round of consultation and remain in force for six years. Lengthy and difficult discussions are quite commonplace in this stage as well. Expertise and information – and particularly the lack of them – are key factors in this stage of the process.

Implementation problems

The management plan stage of the Dutch Natura 2000 policy altered the dynamics of the implementation process. Previously, policy was shaped by a small group of players in a relatively hierarchical manner, but the management plans for the Natura 2000 sites were drawn up at the regional level. However, as there was little or no possibility to influence the core conservation objectives, tensions arose between the various actors in the areas (Arnhouts & Kistenkas, 2001). The political circumstances and varying agendas in the regions also had an effect (Backes et al., 2011), which made the planning process more complex at the very least.

According to Bouwma et al. (2010) the conflicts in the management plan stage were mostly about restrictions imposed on existing and future land uses in the sites, constraints on economic development, a lack of recognition of existing local knowledge and expertise, different visions on nature and biodiversity and its conservation, and differences in the time

horizons for management measures between conservation management organisations (3 to 40 years) and politicians and auditors (5 to 10 years).

In a comparative study of the implementation of environmental directives, Beunen et al. (2009) conclude that for both the Birds and Habitats Directives and the Water Framework Directive several aspects have proved to be difficult at different levels. The directives ushered in new planning practices in which the actors involved look for the best way to serve their own interests. As a result, there were disagreements about the interpretation and application of the directives and the various parties were quick to fall back on the more formal aspects of the directive and pay less attention to the measures needed to facilitate the desired developments at the local and regional levels. This focus on the more formal aspects is strengthened by the fact that the monitoring of the implementation process is one of the EU's most important instruments for maintaining a grip on the way the directive is put into practice; it allows the EU to keep track of developments and make course corrections where necessary. According to Beunen et al., this also shows that uncertainties in the translation of EU policy to the regional scale frustrate the development of an adequate policy. A salient aspect of both directives is that they are structured largely along sectoral lines, and this works through to the national level. This sectoral structure stands in the way of a more integral approach, as proposed in the Water Framework Directive, because sectoral policy processes have their own organisations and actors as well as their own timetables. The timelines of the directives also differ.



Improved coordination and cooperation

Over time the attention given to the various problems that have been identified has led to better coordination and cooperation on the implementation of Natura 2000. In 2008 it was decided to give the provinces the opportunity to draw up the management plans before formally adopting the designation orders, which is a reversal of the implementation process. In some cases this led to a hardening of positions or to actors contesting the conservation objectives (which at this stage can no longer be altered), leading to delays. Also in 2008 the implementation agency Interbestuurlijk Regiebureau Natura 2000 was established to coordinate the preparation of the Natura 2000 management plans (Regiebureau Natura 2000, 2011). There was a perceived need for an independent organisation that could mediate between the various parties involved without taking over their responsibilities (15 competent authorities: 12 provinces and 3 ministries). Various consultation platforms were established where the partners and civil society advocacy groups could discuss progress with the preparation of the management plans, raise problems and where possible resolve difficulties. The Steunpunt Natura 2000, established in 2006, was later incorporated into the Regiebureau to make the relevant information and expertise available (including definitions of the main concepts and terms). The Regiebureau Natura 2000 was disbanded at the end of 2011 and most of its tasks transferred to the Natura 2000 Department of the Ministry of Economic Affairs. The Department was in turn disbanded in 2015 and its tasks transferred to the Nature and Biodiversity Department.

Changing actors

The process from the preparation of the Nature Directives to their implementation has been played by a changing cast of actors. In the decision-making stage in the EU arena and in the transposition of the directives into national policy the main actors are ecological and other experts, policymakers and legal experts; when it comes to implementation it is the government officials and managers who take over, within defined parameters. This is when conflicts arise between ecological criteria and economic and social interests (Van Keulen, 2007; SER, 2006).

The Nature Directives were nurtured by a small group of stakeholders who designed them as technical tools for achieving ecological objectives. They did not consider the consequences for the management of sites and the actual protection of species and so these issues were not discussed with stakeholders at the regional and local levels. For a long time they did not fully acknowledge the need for bottom-up input and the relevance of the different administrative levels: it was an overwhelmingly top-down approach.

Princen (2014) argues that the nature conservation legislation is a battleground between opposing political coalitions, both at the European and the national level: the ecological coalition (nature conservationists) versus the economic coalition (the agriculture, construction and recreation industries). These coalitions consist of mixed companies of civil servants, interest groups, citizens, and sometimes scientists, and cut across the tiers of government.



Reflection:

- Research shows that implementation is not a simple, rational execution of decisions, but a process in which various actors hold different opinions on the significance and consequences of policy. In essence, implementation is the continuation of the debate that took place during the formulation of policy.
- The complexity of the legislation and the ecological issues, coupled with the huge number of interests involved, has made Natura 2000 extremely sensitive politically. At all levels there was a fear that Natura 2000 would impose a 'lockdown' on future development in the Netherlands. Even though many studies refuted these claims, the idea persisted (see Box 3.1).
- There was also a considerable lack of knowledge and information at the local and regional levels. It was only after the new Nature Conservancy Act was passed in 2005 that any real effort was made to change this situation. Considerable improvements have now been made (see next section), but it remains to be seen whether or not the new nature conservation law will carry this process through.

Box 3.1 A Dutch 'lockdown'?

Context: The EU Member States have undertaken to protect biodiversity in Europe. One of the means they have agreed upon to do this is the designation and maintenance of Special Areas of Conservation, which together comprise a pan-European network of the most valuable habitats and natural areas in Europe (the Natura 2000 sites). The network concept is partly based on Dutch nature policy.

A Dutch 'lockdown'? The Natura 2000 policy has been a bone of contention in the Netherlands since the beginning of the century. In 2003 the Ministry of Finance initiated an inter-ministry policy review (IBO) of the European and Dutch nature legislation, with the title 'A Dutch lockdown? European and Dutch nature legislation examined'. The IBO was held because various parties were running into difficulties with the application of the legislation, particularly when deciding on initiatives such as the construction of roads and industrial developments. There were repeated complaints that the Netherlands would be 'locked down' and that implementation of the directives would mean that no new development would be possible. The IBO showed that in many cases this was a simplistic view of the situation, as if 'the European hamster' would prevent the construction of business parks and 'the sand lizard' would prevent the construction of a new hotel. The report concluded that there is widespread public support for improving the implementation framework while respecting the objectives of the directives. However, the IBO pointed out several important obstacles at that time: poor communication between government authorities, the business



community and nature conservation organisations; ambiguous policy statements and information on the application of nature conservation legislation; and insufficient knowledge about the distribution of key species. The IBO proposed a three-step approach: first, concentrate on measures to improve implementation of the directives; then investigate the possibilities for amending national legislation; and finally, if that does not prove sufficient, move to revise the EU directives.

Persistent idea: The idea that the Netherlands will be ‘locked down’ has proved to be powerful and persistent, even though various studies have shown that the situation is not nearly as bad as people think and the supposed problems are baseless. It is mainly the organisations representing farmers and businesses in rural areas that persist in this view (e.g. the Confederation of Netherlands Industry and Employers (VNO-NCW), the industry association for SMEs (MKB-Nederland), the Dutch Federation of Agriculture and Horticulture (LTO Nederland) and the Association of Recreation Entrepreneurs (RECRON)). In June 2009, a letter from Prime Minister Balkenende to President of the European Commission Barroso reinforced the view that strict Natura 2000 protection regime was stifling economic development (Balkenende, 2009). Barroso replied that the directives contained enough scope to resolve the conflicts mentioned by Balkenende at the national level (Barroso, 2009). Barroso was in effect saying that with regard to economic development the position was ‘yes, provided’ rather than the legalistic approach of ‘no, unless’. This echoed what others were saying in the ‘green’ departments at the former Ministry of Agriculture, Nature

and Fisheries (LNV), the implementation agency Regiebureau Natura 2000, the provinces, and NGOs such as Natuurmonumenten.

According to Arnouts & Kistenkas (2011) the conclusion that the Netherlands would be ‘locked down’ by Natura 2000 goes too far, but does contain a grain of truth. It is the ‘one-liner people use to express their dissatisfaction with the various problems that have arisen’. This soundbite tactic has heightened the differences of opinion on Natura 2000. It made Natura 2000 a controversial policy and did not make it any easier for the various parties to resolve their difficulties.

5. Evaluation and feedback: current situation

Negative spin-off

The way the Netherlands handled the introduction of European nature policy has had another important, negative spin-off. According to Van Keulen (2007) the events surrounding the introduction of the Habitats Directive in the Netherlands have led to an extremely negative framing of European influences on national legislation. This was one of the reasons for the rejection of the European Constitution by Dutch voters in the referendum held in 2005. The reasons would appear to have their origin in a combination of factors: the initial lack of appreciation of the need to transpose the directive, which therefore occurred too late; the lack of proper information provision and guidance on implementation; and the almost total lack of involvement of the provincial and local authorities

during the drafting the directive – authorities which would be primarily responsible for the implementation of this directive (Backes, 2011; Boer et al., 2010; Neven et al., 2006; Sociaal-Economische Raad, 2006; Van Keulen, 2007; Van Rheenen et al., 2005).

Recent developments

The processes and problems surrounding the implementation of the directive described above have now generated various solutions. The imbalance between legislation and practice has been addressed at the national level through the application of the ‘hand on the tap principle’ (continuous monitoring and intervention when necessary) and the introduction of the Crisis and Recovery Act and the Nitrogen Reduction Programme. Moreover, recent developments show that many recommendations have found their way into Dutch policy for nature and the environment. The publication of the Nature Pact (Natuurpact, 2013), the government’s vision on nature, ‘The Natural Way Forward’ (*Rijksnatuurvisie*, 2014), and the Nature Conservancy Act (Wet Natuurbescherming, 2015) provide a clearer picture of the different roles to be played by national government, the provinces, other government authorities, the EU, civil society organisations, businesses and individuals in the future of nature policy.

The Nature Conservancy Act will eventually be incorporated into the new Environment and Planning Act (2015). When transposing the directives into the Environment and Planning Act and the Nature Conservancy Act the government chose to remain close to the provisions set down

in the directives and not to set more stringent standards (see Box 3.2). Nevertheless, the Nature Conservancy Act does give the provinces the option of designating provincial nature reserves where those responsible for their management may set higher levels of protection if desired.

Box 3.2 Interpretation of European directives during transposition

European directives must be transposed into national legislation. The Dutch Council of State (RvS, 2012) says that ‘where the legislator wishes to model legislation as closely as possible on EU law, due account should be given to the particular nature of European legislation.’ If, as in the Birds and Habitats Directives, the EU legislator sets down the minimum requirements to be met by all Member States, individual Member States may set higher standards based on their own assessment of the specific conditions prevailing in their own territories. This means that the national legislation does not have to be limited to the requirements set out in the directives. Even if directives are transposed directly (on a one-to-one basis), there must still be a national assessment of the various interests at stake, according to the Council of State (RvS, 2012) in its advice on a previous Nature Conservancy Bill.

European policy evaluation

At the European level, under the Better Regulation agenda work is already progressing on a Fitness Check of the Birds and Habitats Directive. Under the European Commission’s Regulatory Fitness and Performance



programme (REFIT) existing EU law is subjected to Fitness Checks. These are extensive policy evaluations to check whether legislation is fit for purpose, focusing on effectiveness, efficiency, coherence, relevance and added value. From the findings conclusions are drawn about the degree to which the policy has worked and what the results mean for the future of the relevant legislation. The Fitness Check of the Water Framework Directive was completed in 2012. The Fitness Check of the Birds and Habitats Directives was started in 2015 and will be completed in 2016. In his mission letter to Karmenu Vella, Member of the Commission responsible for Environment, Maritime Affairs and Fisheries, Jean-Claude Juncker, President of the European Commission, proposed merging the Birds and Habitats Directives into a more modern piece of legislation (Juncker, 2014).

In the Dutch government's vision on nature, 'The Natural Way Forward' (2014), the State Secretary for Economic Affairs stated that the Netherlands will highlight the need to combine policy and rules for healthy and resilient ecosystems with water safety, sustainable economic development, climate adaptation and other relevant policy areas (in connection with the gradual geographical shift in species ranges). In some cases this will require a more flexible approach to achieving the objectives of EU directives. During the Dutch presidency of the European Union in the first half of 2016 the Netherlands wants to devote time to the evaluation of the nature legislation. The aim is for the Fitness Check to focus on elements that should play a major part in the European debate on future-proofing nature policy, which should ideally be achieved by adapting the implementation of the existing directives (EZ, 2015). The main changes envisaged are:

- putting greater emphasis on the dynamics of natural processes, which will require a shift from 'conservation' and species protection to the development of robust natural areas;
- creating synergy through better linkage between habitat creation and restoration and other social issues, such as water safety and management, recreation and infrastructure, which will in turn create more room for place-based solutions;
- more dynamic and integrated application of the Birds and Habitats Directives, both at the national and European levels, for example through cooperation on achieving the objectives of the European ecological network of protected areas based on existing European biodiversity goals.

Reflection:

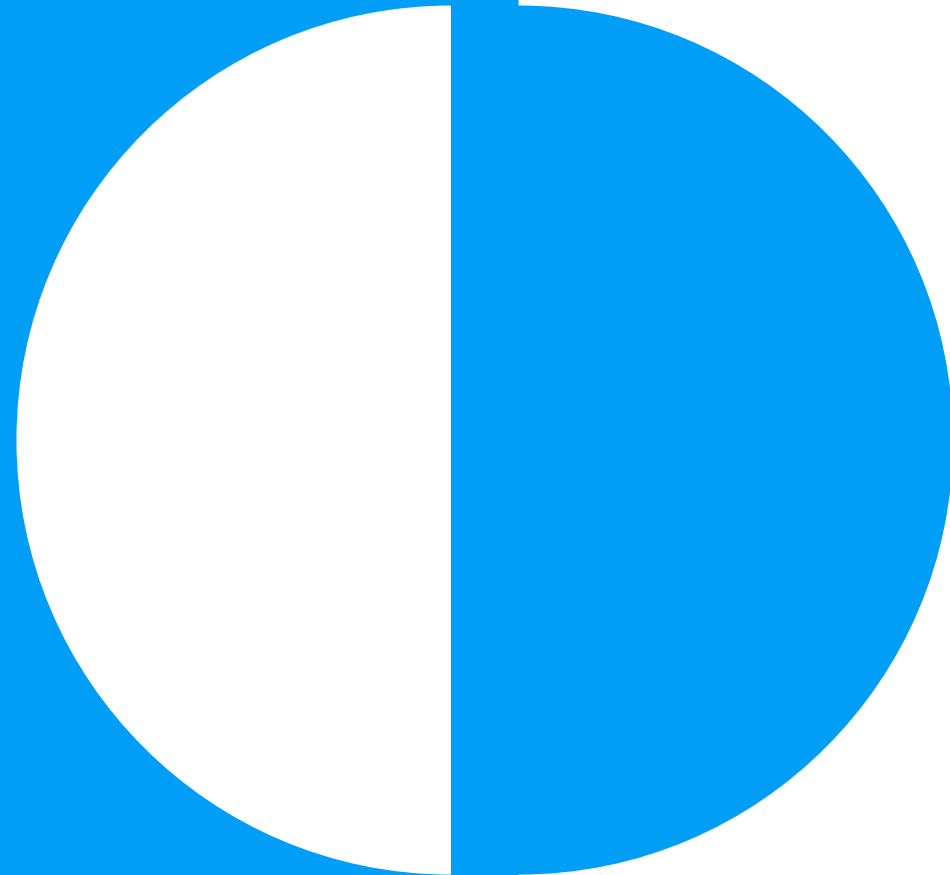
- At the national level lessons seem to have been learned from previous experiences with the development and implementation of the Nature Directives. The national government chose to model the new Nature Conservancy Act closely on European legislation. How this sectoral approach will mesh with the integrated character of the Environment and Planning Act and the multiscale character of the decentralised nature policy remains to be seen.
- Communication, information and knowledge sharing have clearly received more attention over the years. Smooth implementation of the Nature Conservancy Act and the Environment and Planning Act will depend crucially on all involved working together and learning from each other. Among the key challenges are identifying examples



for a proactive approach to legislation (on nature conservation) and supporting and involving the public, the business community and municipalities to make the legislation simpler to apply.

- Regarding the relation with the EU directives, a number of issues require close examination over the coming period: the evaluation of European nature policy; how the national government should involve the other stakeholders and regional and local government, and how these parties wish to make their own input; consideration of wider EU environmental policy for which the Ministry of Infrastructure and the Environment in cooperation with the United Kingdom and Germany has established the Make it Work project; and the way amendments to EU directives are transposed into the new Environment and Planning Act and the Nature Conservancy Act.





THE REGULATION OF URBAN AND REGIONAL TRANSPORT MARKETS

1. Agenda-setting and policymaking in the Netherlands and the EU

Since the 1980s the mobility problems in the Netherlands has been worsening. The answer, according to successive governments, has been to increase the use of public transport (Tweede Kamer, 1988; Van de Velde, 2006). However, public transport services have suffered from several problems:

- efficiency problems: costs were rising but performance (quality and passenger numbers) was not;
- budget problems in the authorities subsidising public transport services: operating deficits were made good by local and regional government.

The Brokx Committee on Restructuring Public Transport (1995) recommended – in tune with the spirit of the times – that the public transport sector should be opened up to the market. Other European countries, including the United Kingdom and Denmark, had already gained experience with various market mechanisms in public transport. The Brokx Committee recommended making operators independent of government authorities, with a strictly commercial relationship between them, and the introduction of market mechanisms, with competitive tendering to ensure efficiency (as long as government authorities and operators were independent of each other), transparent contracts, and decentralisation of responsibilities for public transport to the regions.

In the same period a lively debate was being conducted at the European level on the future of public transport. For example, in this period the

European Commission published a White Paper on the future development of the common transport policy (Commission of the European Communities, 1992), an action plan for a common transport policy (Commission of the European Communities, 1995) and a Green Paper, The Citizens' Network (European Communities, 1995), which focused on harnessing technological developments and improved information and services to develop attractive, safe, flexible and accessible public transport services. In line with previous regulations and directives (e.g. the Public Procurement of Services Directive 1992) the Commission was pushing hard for the creation of an open single market and for the liberalisation of public transport in particular. The underlying idea was that competition would lead to more efficient and better quality service provision. The Lisbon Agenda¹⁰ (2000) again underlined the need for the rapid liberalisation of public transport.

In 2000 the European Commission made an initial proposal for the Public Service Obligations (PSO) Regulation¹¹, which made it compulsory to put public transport contracts out to tender to promote competition.

¹⁰ The Lisbon Agenda (also known as the Lisbon Strategy) was an action and development plan for the European Union. The ambition was to make the EU the most competitive and dynamic knowledge-based economy in the world by 2010.

¹¹ The Public Services Obligation Regulation is shorthand for REGULATION (EC) No 1370/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

2. Adoption of the Passenger Transport Act 2000 puts the Netherlands ahead of Europe

The government eventually chose an approach in line with the proposals by the Brokx Committee. The implementation document (*Implementatienota*, 1996) sought to introduce competition *for* the market but not competition *in* the market. The main tools for achieving this were working with concessions for the operation of public transport services and putting those service concessions out to tender. Both of these were provided for in the Passenger Transport Act 2000. This Act also regulated the procurement of regional public transport services. The responsibilities for public transport were decentralised to the provinces and city-regions (initially also to a few cities, but these powers were later transferred to the provinces and city-regions). From then on the tendering of service concessions was based on budgets set by the national government. From 2004 the provinces and city-regions received a 'general goal-oriented grant' for local and regional public transport services (*Brede Doeluitkering Verkeer en Vervoer*).

The Passenger Transport Act 2000 changed the public transport system in the Netherlands by changing the tasks, responsibilities and powers for public transport services. In opening up public transport to the market the aim was to make better use of market knowledge, creativity and innovation to make public transport a more competitive alternative to the private car, partly through the establishment of a more commercial relationship between public transport authorities and transport operators. This system reform came after years of public sector budget problems and poor performance by the public transport operators. The aim of the

new Act was to encourage greater use of public transport, reduce running costs and make more efficient use of public money (Ministerie van Verkeer en Waterstaat, 1996). To achieve this, ticket prices were liberalised and responsibilities for public transport decentralised. The transport authorities were expected to exert greater control over the operators. Originally the Passenger Transport Decree 2000 declared the EU Public Procurement of Services Directive (1992) to be applicable, which meant that operational risks were to be borne by the transport operators, because it was expected that the European Commission would require competitive bidding for public transport concessions. The EU had been promoting competition for years to improve the quality and efficiency of services and pave the way for international services (Veeneman & Van de Velde, 2014).

3. Further policymaking and negotiations in the EU

In the years following the introduction of the Passenger Transport Act 2000 the European Commission's proposals were discussed by the Member States, stakeholders and lobby groups and subsequently amended by the Council and the European Parliament (Van de Velde, 2008). A key issue in the negotiations between the Member States were the procurement procedures. Under the Dutch presidency in 2004 considerable pressure was exerted to get the PSO Regulation drafted and it was finally adopted in 2007. The main aim of the PSO Regulation is to create a level playing on the Single Market. By creating competition in a sector dominated by national monopolies (Veeneman et al., 2014), the EU aims to promote more attractive, innovative and cheaper services (European Union, 2007).

The PSO Regulation requires each Member State to establish a single fair and transparent procedure that meets the EU's free market principles. In places, the PSO Regulation refers to the Public Procurement of Services Directive and national legislation in the Member States, but the final set of procedures still does not provide clarity for all those involved in the regions. The regulation requires public authorities to enter into a public service obligation with transport operators when the operators have an exclusive right or are financially compensated for costs incurred. In contrast to the Passenger Transport Decree 2000, there is no requirement for operators to bear the risks. The PSO Regulation in principle obliges public authorities to put concessions out to tender if they want to 'procure' public transport services or offer exclusive rights to operators, but at the same time provides considerable latitude to derogate from this obligation by allowing direct operation of the service by the government authority or an internal operator. Public service concessions may be granted for a maximum of 10 years for bus services and 15 years for rail and integrated networks. Dutch legislation originally included different concession periods, but these have since been scrapped; on this point the PSO Regulation is directly applicable.

As mentioned above, the PSO Regulation allows public authorities, under certain conditions, to operate provide public transport services themselves or award contracts to internal operators. At the insistence of the Netherlands, Article 5(2) of the regulation was amended to give Member States the option of derogating from this possibility in its national legislation ('Unless prohibited by national law...'). The Netherlands

wanted to ensure that the requirement for competitive tendering under the Passenger Transport Act 2000 would not be open to challenge at the national level (Van de Velde, 2008).

Adoption of the PSO Regulation (EU)

The PSO Regulation provides considerable latitude in how public transport services are provided: a completely free public transport market, competitive tendering and in-house contracting to internal operators are all possible. When public authorities put service concessions out to tender they may negotiate the details with potential operators as long as there is a level playing field and all procedures are transparent to all parties. Under the Passenger Transport Act 2000 the only legal option in the Netherlands is competitive tendering. After the PSO Regulation came into force in 2007, the House of Representatives asked the minister to legislate for the possibility of awarding public service contracts to internal operators in the four city-regions (Roefs motion), something that had not been an issue when the draft PSO Regulation was being debated at the European level. Under the Balkenende IV government a bill was prepared to provide for this option, but the Rutte I government dismissed the relevant motion. However, in 2011, under the Rutte II government, a private member's bill was submitted giving an unconditional legal basis for awarding public service contracts to internal operators (in-house contracting) in the cities of Amsterdam, The Hague, Rotterdam and Utrecht. The bill was passed and came into force on 1 January 2013.



4. Implementation

After the Passenger Transport Act 2000 came into force on 1 January 2001 the regional transport authorities started the process of putting public transport concessions out to tender. Because of the complexity of the situation in Amsterdam, The Hague and Rotterdam, these cities were permitted to delay the start of their tendering procedures. The delay was permitted by the Act, but the option of derogating from the system only became possible when the Act was amended following the passing of the private members bill mentioned above (Tweede Kamer, 2011).

Improved efficiency of public transport

After the first round of competitive tendering the efficiency of public transport services improved, but after the second round the improvement in efficiency levelled off and no further cost reductions were achieved. No significant differences in customer satisfaction were observed between services awarded by competitive tendering and services not put out to tender (Twynstra Gudde, 2010; Ebbink, Visser & Van der Westen, 2012).

Many sides of public transport

In view of the high population density in the Netherlands, the national government invests in public transport to exert a significant influence on mobility issues. The government's aim is to improve the performance of public transport, including increasing the number passenger kilometres travelled. To do this, public transport must be made more attractive to potential passengers. The attractiveness of public transport is determined by passenger needs, the degree to which these needs are met and the

degree to which passenger expectations match their experiences of public transport services (Ebbink, Visser & Van der Westen, 2012). Important factors in this regard are personal safety, reliability, speed, ease of use, comfort and the overall journey experience. The PSO Regulation deals mainly with the supply side (efficiency and competition), but gives Member States considerable freedom to include consideration of these aspects in the tendering process. In this regard, the preamble to the regulation says the following: 'In keeping with the principle of subsidiarity, competent authorities are free to establish social and qualitative criteria in order to maintain and raise quality standards for public service obligations, for instance with regard to minimal working conditions, passenger rights, the needs of persons with reduced mobility, environmental protection, the security of passengers and employees as well as collective agreement obligations and other rules and agreements concerning workplaces and social protection at the place where the service is provided.' In line with this, the Passenger Transport Act 2000 lists requirements that must or may be attached to service concessions, such as standards for accessibility, the provision of information and punctuality. In 2009 the Advisory Council for Transport, Public Works and Water Management noted that despite this, public transport operators pay more attention to satisfying the interests of the public authorities rather than those of the passenger (Raad voor Verkeer en Waterstaat, 2009).

As stated above, the national legislation is based primarily on supply side requirements relating to cost reduction and the volume of services provided. The most important objective for the regions, though, is

not efficiency but public interests, such as the environment and the accessibility and safety of public transport. Nevertheless, the first contracts were selected mainly on price and quantity, and those contracts contained too few incentives to improve the quality of services and attract more passengers. The 'softer' passenger interests were almost entirely ignored in the evaluation and awarding of contracts. The operators did make these aspects an important part of their submissions (Ebbink, Visser & Van der Westen, 2012), but the tenders were so competitively costed that in the contract stage even performance suffered, and as a result the flexibility to respond to changing circumstances and public interest was also compromised. The regional and local authorities themselves were prepared to invest in regional public interests and eventually the public transport authorities gave more priority to quality criteria.

After the first round of public transport contracts, customer satisfaction hardly increased at all (Van Buiren et al., 2012) and the improvements that had been made were to be found in areas where services had not been put out to tender. It is possible that here the 'threat' of competitive tendering led to improvements for the passenger. After the second round of tenders the quality of services as experienced by passengers did improve (Van Buiren et al., 2012), although the expected increase in passenger numbers did not materialise. In the first round of tendering the contracts did not provide incentives to increase passenger numbers (Veeneman & Van de Velde, 2014). A point to bear in mind here is that at that time the national government had made substantial budget cuts, which meant that efficiency improvements could not always be translated into improvements in

services (Van de Velde & Eerdmans, 2013). In 2000, CROW, the technology platform for transport, infrastructure and public space, began publishing annual surveys of customer satisfaction across a broad range of criteria under the title 'public transport barometer'. The public transport barometer for 2014 (KpVV-CROW, 2015) shows that in 2014 customer satisfaction in general was greater than in previous years.

Regulation versus dynamic environment

The legal aspects of contracting and operating public transport services are well developed. A solid legal basis for working relations between public transport authorities and operators is needed because there are important interests at stake and services are operated by major players. Service concessions are a means to bind private operators to social objectives (Mouwen & Rietveld, 2013). However, it has proved impossible to fine-tune all the details in long-term concessions (Kennisplatform Verkeer en Vervoer, 2013) because the environment in which public transport operates is too dynamic. It is essential to involve a range of stakeholder organisations and individual passengers if the agreements made between public transport authorities and operators are to reflect the diverse and changing goals of policy and legislation. It will not always be possible to translate these goals into detailed and precisely measurable criteria in concessions.

In the meantime, considerable experience has been gained with the tendering of concessions and the public transport authorities are looking for a new model for working with operators. They want service concessions to be more flexible to reflect the dynamic public transport environment and



changing needs. Working with parameters and criteria in the concessions makes it difficult to respond to changes in the operational environment during a concession period (Kennisplatform Verkeer en Vervoer, 2013; Van de Velde & Eerdmans, 2013). In this phase, therefore, there is a growing need for a new model in which public transport authorities and operators work together in an ongoing dialogue to ensure public transport services meet society's needs. EU rules and national rules do not appear to prevent this. Under the PSO Regulation, public authorities and transport operators are permitted to enter into negotiations at an early stage in the tendering process, but these opportunities are not being fully utilised in practice.

The national and subnational public authorities, transport operators and consumer organisations are working together in a joint initiative (*Samen op Reis*) for better cooperation in public transport. One of the issues they are looking at is increasing the amount of flexibility in the awarding of service concessions (www.samenopreis.nu, 2015).

Reflection:

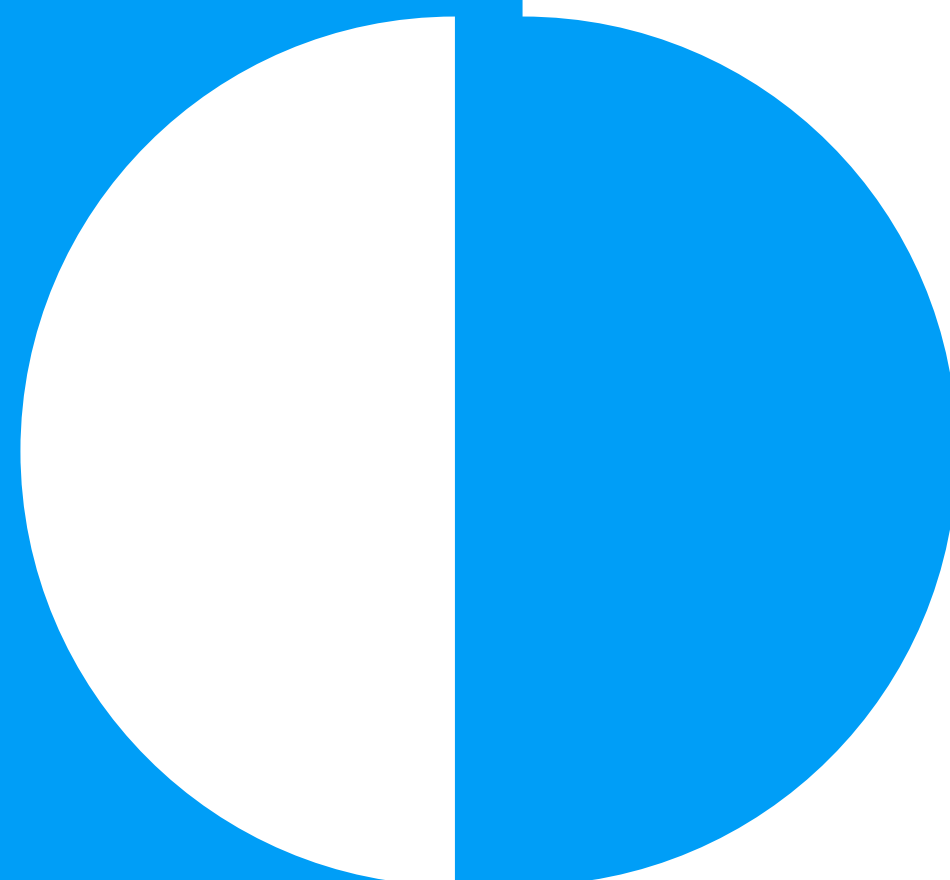
- Against the background of the European agenda and policy process for the introduction of market mechanisms in public transport and the European Commission's vision on public transport, the Netherlands developed a new market organisation for urban and regional public transport based on its own vision.
- The European legislation was finally adopted seven years after the Dutch law came into force. The Netherlands took an active part in the European policymaking process and worked hard to ensure Dutch ideas on market

organisation (competitive tendering obligation) were kept alive where the EU was going to adopt a more flexible approach. At a later stage the Dutch House of Representatives took advantage of the latitude in the EU rules to make the Dutch legislation more flexible.

- The main objective of the EU rules on public transport is to create an open market for public transport, based on the conviction that more competition will lead to cost reductions and greater efficiency. The Dutch legislation shares the objectives of making more efficient use of public funds and greater use of public transport.
- The EU PSO Regulation contains a less restrictive set of rules, with the aim of providing public transport services that meet the needs of passengers.
- At the regional level there are other interests and objectives than just efficiency and cost reduction: the environment, the accessibility and safety of public transport, coordination with spatial planning and development, and customer satisfaction. Public transport stakeholders (public authorities, transport operators and consumer organisations) are working together in the *Samen op Reis* initiative to make improvements to public transport that directly benefit travellers.



5



WATER FRAMEWORK DIRECTIVE

The main objective of the Water Framework Directive (WFD) is to achieve a good ecological and chemical status of surface waters, such as rivers, lakes, deltas and coastal waters, and of groundwater by 2015. This good status is determined on a scientific basis, but it is possible to derogate from these standards for social reasons. Member States have considerable latitude in defining the detailed quality objectives and how to achieve them, but improvements must be made based on the ecological potential of waters, which is determined using reference conditions.

1. Agenda-setting and policymaking in the EU

The WFD is the outcome of various developments: growing criticism of the technocratic nature of European water policy, the internationalisation of water management, the growing complexity of European water legislation and an increasing interest in environmental protection (Beunen et al., 2009). Water, and particularly water pollution, was the first topic to be addressed by EU environmental legislation. The first water directives¹² date from the period 1973–1975. They established environmental quality standards for surface waters (Infomil, 2015), but the fragmented nature of the legislation and the focus of the directives on specific aspects of environmental quality and specific threats prevented an integrated approach to tackling these problems. In 1994 the European Commission made its first proposals for revising these directives, but the Environment Committee of the European Parliament and of the Council considered that these proposals did not take a sufficiently integrated approach and argued for a fundamental revision

¹² These directives were later consolidated in the Water Framework Directive.

of European water policy. The initiative for this lay with the Netherlands, France, Germany, the United Kingdom and Spain. The European Commission presented its first proposal for a WFD in February 1997.

2. Negotiations and decision-making at the European level

The publication of the first proposal for a WFD led to a broad and vigorous debate between the EU institutions, the Member States and subnational government authorities, interest groups and other stakeholders. The principle of taking an integrated approach was widely appreciated and supported; criticism was directed mostly at the details of proposed directive. From the weakening of the proposals during the negotiations it can be concluded that the criticisms were concerned mostly with the extensive restrictions on the freedom of the Member States to determine how to achieve the overall objectives of the WFD.

Box 5.1 Weakening of the proposed WFD during the negotiations

According to the Infomil knowledge centre the main changes resulting from the negotiations on the Framework Directive were made to improve the practicability of the directive and concerned the following topics: 'expanding the operational scope of the directive regarding marine waters; an absolute obligation to recover the costs of water services; strict protection of groundwater; and the inclusion of designated protected areas at the national and local levels. Substantial amendments were also made to the environmental objectives in Article 4 of the WFD,

including grounds for derogation and exemptions. The transposition deadline was eventually extended by three years and the deadline for achieving the overall goal of a “good status” of European waters was put back five years from 2010 to 2015.’

Source: website InfoMil, consulted March 2015

The differences of opinion over the WFD were not restricted to substantive aspects; there were also several procedural hitches, which led to the eventual delay in the introduction of the directive. In essence, these were down to inter-institutional differences which led to impasses in the negotiations. It began with the agenda-setting of the substantially amended proposal in 1998 by the UK Presidency of the Council before the European Parliament had formulated a position during the first reading of the 1997 proposal. This led to a delay caused by the submission of a few hundred amendments. In the meantime, following a change in EU decision-making procedures, under the codecision procedure the proposal had to be adopted by the European Parliament and the Council. According to Kaika and Page (2003) this change in legislative procedure offered the NGOs new opportunities to participate in the policymaking procedure and exert more influence on the final content of the EU directives. The directive was eventually adopted in 2000.

3. Rollout of the WFD at EU level

The Dutch strategy at the European level

In the further development of the directive at the European level the Netherlands adopted a proactive stance right from the start and made a constructive input to the content of the directive. Dutch civil servants were well represented in several working groups at the European level (Neven et al., 2006). With a view to the implementation of the WFD, the EU Member States (and a few other countries) worked closely together on a common implementation strategy, which was adopted in May 2001 during the informal meeting of EU water directors. In the meantime this common strategy has given rise to a large number of guidance documents and other information sources for coordinated implementation of the directive.

At the technical/official level, the Dutch input was ambitious and based on sound knowledge of practical experience, while the growing political involvement increased awareness of the potential implications of the introduction of the directive. Due to previous experiences with the Groundwater Directive and the 1991 Nitrate Directive, which led to a strict manure policy, attention was repeatedly drawn to the specific Dutch situation. The European Commission and the other Member States were also regularly briefed on the progress being made in the Netherlands. In 2002, at the request of the Netherlands, the guidance document on the classification of water bodies was amended to prevent having to sample and assess every ditch in every polder, and in 2005 the Netherlands successfully introduced the ‘pragmatic approach’ (a ‘pragmatic’ agreement



made in Prague at the initiative of the Netherlands), which sets goals in relation to the current situation and realistic policy options instead of using a theoretical reference situation with no empirical underpinnings. This approach gave water managers confidence, because it was closer to actual practice and stimulated national implementation ('the EU also listens to the Member States'). The political goal was to set 'feasible and affordable' targets, and so priority was given to achieving them, but using the maximum period allowed so that the costs would be socially acceptable.

Knowledge exchange at the European level

The World Wide Fund for Nature (WWF) organised three European seminars on cooperation to raise awareness of the issues. The seminars explored the following topics: (1) water and agriculture, (2) the role of wetlands in integrated river basin management and (3) good practice in river basin management planning. The objectives of the seminars were to provide information and opportunities for debate on the WFD, share experiences and expertise, and establish good practice for implementing key elements of the directive. (Europese Commissie, 2002)

Reflection:

- The Netherlands played a major role in developing a more practical implementation regime through the preparation of guidance documents and other advice. A crucial aspect of this was the use of expertise gained in practice.

- At the European level various stakeholders (Member States, civil society organisations) have shared their knowledge and expertise on the implementation of the WFD and the problems encountered.

4. Transposition into national legislation

Despite starting in good time, the transposition of the WFD into national legislation ran into delays. In 2003 the Aquarein report (Van der Bolt et al., 2003) on the possible profound implications of the WFD led to considerable commotion in the Netherlands. The report claimed that large areas of agricultural land would have to be taken out of production, and even then it would not be possible to achieve the ecological objectives everywhere. As a result of this, implementation of the WFD came to be seen as problematic and politically controversial. In addition, the river basin management approach meant that the highly decentralised governance structure in the Netherlands would have to be adapted. This was achieved by establishing inter-administrative consultative structures for each river basin area for officials and elected representatives, which led to better coordination between provinces, water boards and municipalities. All in all, the transposition was delayed and in January 2004 the Netherlands was found to be in default (the deadline was December 2003). Thanks to good contacts with other Member States and the Commission and the Dutch contribution to the development of the implementation strategy, the Netherlands was able to provide an acceptable explanation for the delay (Neven et al., 2006). From that moment the implementation of the WFD took place in close consultation with those responsible on the ground within the agreed timetable.



Box 5.2 Transposition of the WFD into national legislation and policy

Water Act (2009)	last amendment 2012
Water Decree (2009)	last amendment 2012
Water Regulation (2009)	last amendment 2012
Environmental Management Act (2005)	last amendment 2013
Water Quality Standards and Monitoring Decree 2009	last amendment 2011
Water Framework Directive Monitoring Regulation (2010)	last amendment 2011
Water Framework Directive Monitoring Programme Decree (2010)	last amendment 2011
National Water Plan 2009-2015	adopted on 22 December 2009

Source: Kenniscentrum InfoMil, consulted March 2015

The WFD divides Europe into river basins. The Netherlands covers parts of the river basins of the Rhine, the Ems, the Scheldt and the Meuse. The management plans for these river basins are appended to the National Water Plan. The Minister for Infrastructure and the Environment is the ‘competent authority’ for the four Dutch river basins. The National Water Plan 2016–2021 is currently under preparation and stakeholders can make representations on the draft National Water Plan policy strategy 2016 and the environmental impact assessment. The National Water Plan 2016–2021 will be formally adopted in 2015.

Regulatory latitude

- The Netherlands has actively sought to maximise its regulatory latitude when implementing the WFD:
- Water bodies have been designated with a view to limiting the costs of implementation.
- As it was clear that not all the objectives could be met in 2015, use was made of maximum allowable period.
- Advantage has been taken of synergies with other directives.

5. Implementation in the Netherlands

Governance ambitions

Besides containing substantive water quality and water management objectives, the WFD also set out to change the organisation and regulation of water management and the reporting obligations. The governance structure in the Netherlands at that time was not yet consistent with the WFD requirements. In 2004 the government adopted a ‘pragmatic implementation strategy’ with realistic targets. It decided not to make any radical changes to its existing institutions and governance arrangements (Van der Arend et al., 2010), but to divide the responsibilities for the implementation of the WFD between the provinces, water boards and municipalities (see Box 5.3).



Box 5.3 Division of responsibilities for water management in the Netherlands

- The national government (in particular the minister for infrastructure and the environment) is responsible for national policy and the strategic water management goals in the Netherlands, for measures with a national scope and for source-based policy.
- The provinces are responsible for translating this policy into regional policy and for strategic goals at the regional level.
- The water management authorities (the water boards for the regional water systems and the national government for the national waterways and coastal and marine waters) are responsible for operational water management. The water management authority establishes the conditions required to achieve the water management objectives, determines the concrete measures to be taken and implements these.
- The municipalities have just a few water management tasks, in particular for rainwater and groundwater in urban areas, local spatial planning measures for water management, and implementing environmental measures in urban areas under the WFD.
- The provinces are responsible for groundwater quality, but may delegate these responsibilities to municipalities.
- The water supply companies are responsible for the management and supply of drinking water resources.

Source: Kenniscentrum InfoMil, 2013, consulted March 2015

To align the existing Dutch governance structure for water management with the WFD river basin approach a consultative arrangement at the river basin level was established for planning and coordination between the various tiers of government. These ‘RAD partnerships’ (for regional administrative dialogue), such as Rijn-Oost, Rijn-Midden and Rijn-West, were prepared by officials from all the participating organisations in regional meetings. In the evaluation of the WFD for the period 2000–2009 (Ten Heuvelhof, 2010) this consultative arrangement was considered to be one of the success factors for implementation.

Public participation

Public participation is a mandatory aspect of the WFD. According to Behagel (in Van der Arend et al., 2010) the Netherlands has more than met the requirements, both for the provision of information and public consultation on plans and for involving civil society parties in consultative bodies, sounding board groups and the preparation of measures to be taken by the water boards. Notwithstanding this, Behagel argues that access to information and the transparency of the arguments used should be improved. In 2012 the Minister for Infrastructure and the Environment concluded from various evaluations that public participation had not led to greater involvement of the public (IenM, 2012), and neither did all the parties consider the participation process to have been a democratic one (Van der Arend, 2010). The decision-making power remained firmly in the hands of the responsible government authorities, although it must be said these were democratically chosen, and the nature conservation organisations in particular thought that they had too little influence on



the final decisions. The involvement of various tiers of government with different powers and differing economic interests muddled the field and prevented the full expression of participative democracy. Part of the reason for this was the lack of an overall view. To provide the public with a clear picture, fact sheets were compiled for each of the river basins so that information on objectives, measures and standpoints did not have to be cobbled together from different plans and reports.

Deadlines postponed

In 2008 the government concluded, in response to the ex ante evaluation of the implementation of the WFD in the Netherlands (PBL, 2008), that the parties involved should take advantage of the maximum period for achieving the objectives allowed by the WFD, while maintaining the objectives themselves. Any possible changes to the objectives will only be considered in 2021 if careful analysis shows that for certain situations they cannot be achieved by any means. The ex ante evaluation revealed that the proposed measures can bring about considerable improvements in chemical and ecological water quality, but that it is unlikely that all the objectives will be achieved (even with a postponement until 2027), especially in the regional water bodies. The government emphasised that the Netherlands will not be 'locked down' for new development or the expansion of existing activities.

The work programme for the river basin management plans (Min IenM, 2012), drawn up by the Ministry of Infrastructure and the Environment in consultation with regional parties and national stakeholder associations,

continues the pragmatic approach to implementing the directive within the parameters set down in the WFD. The underlying principles remain unchanged:

- The Netherlands will meet the requirements of the EU directives.
- Existing Dutch water policy will be continued as far as possible.
- The Netherlands will carefully weigh up the interests of the three Ps: People, Planet, and Profit.

The Work Programme 2015 states that full use will be made of the maximum period allowed by the WFD (two further phases of six years amounts to a total extension of the deadline until 2027) in order to maintain the agreed objectives. However, the 2015 Work Programme for the river basin management plans will review the objectives and measures in the light of the outcomes of various studies into the effectiveness of the measures being taken, the trends in water quality and the resources available at that time, as well as the risks of incurring a notice of default from the European Commission.

The National Administrative Agreements on Water and Nature (Ministerie van IenM, 2011) contain a number of agreements on the implementation of the WFD, including the establishment of an Information Service on Water, run jointly by the water boards, Rijkswaterstaat and the Association of Provincial Authorities (IPO).



Cross-border coordination and cooperation

In a river basin the responsibility for coordination with upstream countries lies with the national government. The government has brought the regional parties into the process and together they have agreed timetables and formulated tasks for the international parts of the river basin management plans, where relevant drawing on other directives and developments. The parties to the management plans also hold intensive consultations at the regional level on cross-border management plans.

Reflection:

- Implementing directives when many actors at different administrative levels are involved requires good information provision, communication, and transparent processes and decision-making, while maintaining focus on the objectives to be achieved and the measures needed to facilitate the desired developments at the local and regional levels. In such a context with multiple actors, stakeholder participation is essential for preparing well formulated plans that are feasible, affordable and can count on support.

6. Monitoring, evaluation and reporting

The National Administrative Agreement on Water defines the responsibilities for setting standards, implementing measures, and oversight. The national government has the prime responsibility for setting standards for chemical and biological water quality. These standards have been adopted from various EU directives, but the directives permit some deviation. The national government is responsible for the

national waterways and coastal and marine waters and the provinces are responsible for the regional water bodies and groundwater. Rijkswaterstaat takes the measures needed to meet the standards for the national waterways and coastal and marine waters, and the water boards do this for the regional waters. The responsibility for oversight is also divided: the national government is responsible for achieving the objectives in the national waterways and coastal and marine waters; the provinces are responsible for the regional waters.

Monitoring

Water managers monitor the chemical and ecological status of surface waters and the chemical and quantitative status of groundwater. The provinces monitor groundwater; the water boards and Rijkswaterstaat monitor surface waters. These tasks are carried out on the basis of policy documents prepared in a bottom-up process, drawing on the WFD, EU guidance documents and specific knowledge of the Dutch context. The monitoring programme includes the monitoring network.

The WFD prescribes a series of planning cycles for river basin management plans. Monitoring during the implementation and evaluation of these plans enables an adaptive planning process of learning from previous experiences. Each water management body works on its own part of the programme of measures and reports on these each year. The water managers are also jointly responsible for monitoring water quality.



Evaluation

Van der Arend et al. (2010) call the directive and its implementation in the Netherlands ambitious and ambivalent. It is ambitious because the intended final outcome of the directive is that water in Europe is completely clean, safe and ecologically healthy. It is also ambitious in governance terms, because it sets out to change the organisation and regulation of water management and reporting obligations, and because it requires cooperation with stakeholders across borders and in relation to other directives in the fields of nature, industry, agriculture and the environment. It is ambivalent because of the integrated approach and parallel policy processes. Integration at the local level also requires better integration, coordination or linkage at the national level, but at the same time there are still tensions between national control and planning and autonomous regional and local area-based processes. Moreover, the requirements for involving stakeholders appear to have become more of a negotiating arena for professional lobbyists than a real public participation exercise for those with a direct interest. Often these people only get involved when the plans are actually being implemented, while professional lobbyists, such as nature conservation and environmental organisations, find it increasingly difficult to keep their legal knowledge up to date. Another ambivalence lies in the emphasis on institutional reform in relation to the substantive targets. The latter may, under certain conditions, be lowered and postponed, while the former appears to be intended for a country without any form of organised water management. Van Rijswijk (in Van der Arend et al., 2010) noted that the governance approach of the WFD makes it increasingly difficult to protect the interests of individuals. The essence

of a public task in a democratic state is to protect the public interest, such as a healthy ecosystem, public safety and clean water for everyone. The government should not be afraid to take on this responsibility and to be held accountable for it. Water management is not a 'one size fits all' approach, as stated in the Water Blueprint (EC, 2012). The challenges differ from country to country and area to area – but that does not mean that lessons learned in one place cannot be used elsewhere.

Learning from evaluations

The picture that has emerged from various evaluations of the implementation of the WFD is that it is a complex administrative challenge in which regional parties must be given sufficient room to operate. The problems of water quality and quantity in an area have to be solved in the region, which requires a national policy framework developed with the assistance of the national stakeholder associations. It is preferable that government departments coordinate the policy objectives of various sectors and other EU directives (such as the Nitrate Directive, the Birds Directive and the Habitats Directive) at the national level. Experiences have also shown that stakeholders should be kept better informed. This conclusion led to the establishment of the Information Service on Water, which covers the whole water management sector, because there is a need for information on all aspects of water management and supply and common reporting obligations.



Reporting to the European Commission

The government reports annually on progress with implementing the planned measures, in addition to the mandatory 'interim report describing progress in the implementation of the planned programme of measures' (3 years after completion of the river basin management plans). The regional administrative partnerships advise on the regional aspects of the EU report and can update the report where necessary.

WFD Fitness Check and Water Blueprint

The fact that Europeans can drink tap water without any risk to their health and can swim safely in thousands of coastal waters, lakes and rivers in the EU is due at least in part to the EU's water policy. Water quality in the EU has improved greatly as environmental regulations have cut back pollution from urban, industrial and agricultural sources. In 2010 the European Commission carried out a Fitness Check on the WFD, which led in 2012 to the publication of the Water Blueprint (European Commission, 2012). This sets out the key actions to be taken by water managers and policymakers to address the challenges faced by the aquatic environment. The Water Blueprint is based on extensive public consultations, both during its development and under the Fitness Check, which involved the general public, stakeholders, Member States and other EU institutions and bodies. The evaluations during the Fitness Check revealed that the objectives of the WFD are likely to be achieved in slightly over half (53%) of EU waters in 2015. It is important to qualify this statistic by noting that it is based on the 'one out, all out' principle, which means that the worst parameter

determines the overall judgment on the quality of the whole water body.

At the 4th EU Water Conference, held on 23 and 24 March 2015 in Brussels, the Netherlands asked for the use of this principle when determining water quality in the WFD method to be looked at (Waterforum online, 2015).

This is because as a Member State improves its monitoring programme (measuring more parameters and operating a more extensive sampling network) the status of its water bodies will worsen according to the parameters measured. Other Member States also indicated that they faced this problem. The European Commission recognises the problem and acknowledges that this method of reporting and comparison can lead to awkward outcomes in Member States as improvements resulting from the investments made in water quality management are often not visible, which undermines support for such investments. A more appropriate reporting method is currently being developed. The objectives are not at issue, but the way progress towards them is measured and reported.

Environment and Planning Act

The Water Act and various other laws will be replaced by the new Environment and Planning Act. The responsibilities and standards will not change, but the plans will. The national government and the provinces will make Environment and Planning Visions which will combine several sectoral plans to create an integrated strategic plan for the physical environment. This plan will form the basis for various programmes, which together will comprise a package of policy proposals and actions to achieve stated environmental objectives or standards. This streamlining of various

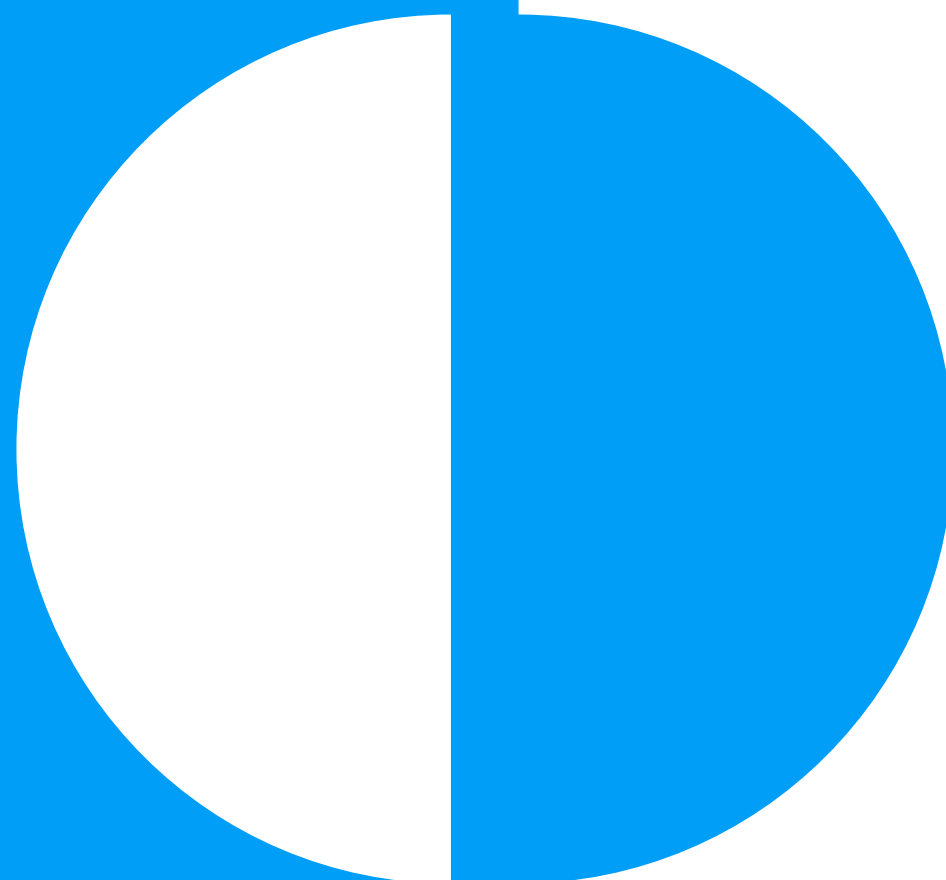


existing laws will simplify things for developers: there will be a number of general rules (and possibilities for deviating from them) and a single planning and environmental permit and project decision.

Reflection:

- The WFD is an ambitious directive, both in terms of its substantive objectives and its governance ambitions, the required cooperation with stakeholders across borders and the aim of an integrated approach with other directives in the fields of nature, industry, agriculture and the environment. However, this integration can give rise to tensions at the local level between national control and planning and autonomous regional and local area-based processes. Resolving these problems will require better integration, coordination or linkage at the national level.
- The Environment and Planning Act will make it easier to coordinate different policy areas relating to the environment and will reduce the administrative burden. Further attention may have to be given to the development and amendment of new EU directives.
- Efficient water management has become a priority in the Netherlands, due in part to the debate on the WFD. Information sharing is increasing taking on the character of 'learning by doing'. An extensive knowledge network has arisen around the implementation of the WFD and several parties are attempting to clarify the often complicated processes, procedures and requirements.





THE TECHNICAL PILLAR OF THE FOURTH RAILWAY PACKAGE

During the writing of this advice negotiations began on the Fourth Railway Package (European Commission, 2013b). The Fourth Railway Package contains six legislative proposals and several work documents and reports by the European Commission. These can be divided into two pillars:

- the governance and market opening pillar;
- the technical pillar.

Discussions in the negotiation stage focus on the governance and market pillar, which includes issues like opening the market for domestic passenger rail transport services and the independence of infrastructure management. The negotiations on the technical pillar are almost complete. The analysis below covers the technical pillar, specifically the introduction of a European train protection and control system (ERTMS¹³). As the decision-making stages on the European Rail Traffic Management System (ERTMS) at the European and national levels run in parallel, this process can provide lessons for the interaction and coordination between these governance levels.

1. Agenda-setting and policy preparation

The development of a Single European Railway Area

The European Commission wants to improve Europe's rail services. The initial aim was to create a single market for rail services, which would lead to a more efficient and customer-responsive industry. This ambition

¹³ European Rail Traffic Management System

had been aired in the White Paper entitled 'European Transport Policy for 2010: time to decide' (European Commission, 2001), but even before then work was already progressing on the interoperability of the rail networks of the Member States so that in future trains could run on any part of the European network. The directive on the interoperability of the high-speed rail system (European Communities, 1996) was a first step towards realising a European 'public transport area' without internal borders. The directive harmonised the different technical standards of the Member States for railway infrastructure and rolling stock.

Following the 2001 White Paper, the European Commission produced a series of Railway Packages of proposals for directives and regulations with the aim of eventually establishing a Single European Railway Area. The Railway Packages contained proposals for regulating a range of issues, such as the gradual opening of the market for rail services, the establishment of independent railway undertakings and infrastructure managers, certification and regulatory oversight, passenger rights, safety rules and the harmonisation of networks (interoperability). In 2011 the European Commission published the Roadmap to a Single European Transport Area (European Commission, 2011), a White Paper containing the Commission's vision for establishing a fully integrated European railway market. The steps the European Commission considers need to be taken include expanding and adapting the rail infrastructure so that it can take a greater proportion of freight transport, developing the European high-speed network, introducing a modernised train protection and control system (ERTMS), and private sector engagement to eliminate

counterproductive grants and generate revenues. In its White Paper the European Commission gives priority to the Single Market for rail services because this is where bottlenecks to achieving the Single European Railway Area are still most evident 'This includes the abolishment of technical, administrative and legal obstacles which still impede entry to national railway markets.'

Commission proposal: the Fourth Railway Package

The Fourth Railway Package (European Commission, 2013b), under negotiation at the time of writing, sets out, in line with the 2011 White Paper, to make the rail sector more efficient and attractive to passengers and enhance its attractiveness in comparison with other modalities. The Single European Railway Area 'can only be achieved if rail provides efficient and attractive services, and if we eliminate regulatory and market failures, barriers to entry and burdensome administrative procedures which hamper efficiency and competitiveness' (European Commission, 2013b). The European Commission considers that a higher level of harmonisation is necessary to realise the potential of the Single Market, because 'Technical barriers to trade and to interoperability – the ability of trains to run on any section of the network – are continuing to hamstring competitiveness in the railway industry.' Opening up national railway markets, strengthening infrastructure governance, and introducing simplified procedures for allowing transport operators to operate services and rolling stock across national boundaries without restrictions should, according to the Commission, increase competition and lead to improved productivity and

more effective services, more investment in rail infrastructure and greater responsiveness to customers' needs.

Market pillar

The Fourth Railway Package proposes opening the market for domestic passenger transport services to all rail operators as of December 2019 and introducing mandatory tendering of public service contracts (including concessions). It also proposes tightening the conditions for the independence of infrastructure managers with the aim of ensuring fair and equal treatment of all railway operators. As stated above, the market pillar is the most important topic in the European negotiations on the Fourth Railway Package. Both the opening of the market for domestic rail services and the independence of the infrastructure managers are sensitive issues in certain Member States.

Technical pillar

The technical pillar is about eliminating administrative and technical obstacles to the safety and interoperability of the European rail network. When this Rli advice was being prepared, negotiations between the European Parliament and the Council on the technical pillar were almost complete. The measures to be taken to remove these obstacles include simplified certification of international railway undertakings and transferring responsibility for the authorisation of rolling stock for international services from the individual Member States to the European Railway Agency (ERA). The ERA will be given an enhanced role in the supervision of national safety agencies, specifically for safety and



interoperability, and major responsibility for facilitating the deployment of the ERTMS.¹⁴ The Dutch government has stated a preference, independently of the Fourth Railway Package, for introducing the ERTMS (Tweede Kamer, 2014b) and has made a start with the development of the this system in its own ERTMS programme. This means that the European negotiating and development phase is running in parallel with the Dutch implementation phase.

The European Commission believes it is necessary to strengthen coordination of the development of the ERTMS at the European level (European Commission, 2013b) because a harm harmonised train protection and control system in Europe, as is being developed for the high-speed network, would reduce the number of casualties in railway accidents. Moreover, trains should be able to cross borders without delays or having to change locomotives. Under the Commission's proposals, the ERA will be responsible for the system specifications, compatibility between different versions, the development of new versions and overseeing the introduction of the ERTMS. Under the TEN-T Regulation (European Union, 2013) the ERTMS should be in operation on the Trans-European Transport Network (TEN-T) no later than 2030. The Betuweroute rail freight line is part of this core network.

¹⁴ The directive on the interoperability of the high-speed rail system (1996) required that from 2002 the ERTMS must be installed when building high-speed rail lines as part of the trans-European Networks (transport, telecommunications and energy infrastructure) and when the signalling systems on existing such lines are replaced or upgraded (European Communities, 1996).

The European Commission wants to see the development of longer routes through cross-border harmonisation, which will offer competitive advantages to rail operators. The aim is to enhance the economic position of suppliers of rail systems by providing them with a single market with lower costs (European Commission, 2013b). The downside, according to the Kuiken Committee (Tweede Kamer, 2012), is that Member States have an aversion to harmonisation because of national industrial interests (the Netherlands, though, has no train manufacturing interests).

Dutch position in the negotiation stage

The Dutch government sees the further integration of the Single European Railway Area as an essential part of the development of the European Single Market, with guaranteed free movement of goods, services and people throughout the EU (Tweede Kamer, 2014c). Like a few other EU Member States, however, the Dutch parliament (both the upper and lower houses) was negative about the subsidiarity credentials of the Fourth Railway Package, especially regarding the proposal to open the market for domestic passenger transport services by rail. The government wants to be able to make its own decisions about market opening and dividing up the rail network. Over the next few years efforts will focus on achieving the goals of the national Rail Agenda within the existing market organisation with the direct award of contracts to Dutch Railways (NS) and ProRail (Tweede Kamer, 2013). The technical pillar of the Fourth Railway Package (new position of ERA, simplified certification, implementation of the ERTMS) was approved by the Dutch government (Tweede Kamer, 2013),



which sees improvements in reliability and safety in relation to the desired increase in frequency of services as the main challenge.

2. Transposition into Dutch law and implementation

Third Railway Package

Recently the House of Representatives has passed an amendment to the Railways Act (Tweede Kamer, 2014c) enacting the EU Directive establishing a Single European Railway Area in Dutch law. This directive was part of the Third Railway Package. During the preparation of this advice the draft decision on the implementation of EU Directive 2012/34/EU lay before the House of Representatives. Among other things, this legislates for access to and payment for service facilities (Tweede Kamer, 2015).

Introduction of the ERTMS in the Netherlands

As stated above, the European Commission's Fourth Railway Package proposes the introduction of the ERTMS to provide a harmonised train protection and control system on European railways.

In the Netherlands this system has already been implemented on the HSL-Zuid high-speed connection from Amsterdam to Brussels and Paris, the Betuweroute rail freight line, the Hanzelijn between Lelystad and Zwolle, and the Amsterdam-Utrecht section of the national rail network. The further introduction of this system will take place on the basis of the government's preferential decision (Tweede Kamer, 2014b) to introduce ERTMS with proven Level 2 technology on large parts of the rail network

in the period to 2028. This will ensure that the EU-TEN corridors to be established by 2020 and 2030 and as much as possible of the rail network included in the high frequency rail transport programme (*Programma Hoogfrequent Spoor*) in the Randstad will be equipped with ERTMS. This preferential decision was taken quite separately from the decision-making process on the Fourth Railway Package and was prompted by the fact that large parts of the train protection system in the Netherlands will have to be replaced over the next 20 to 30 years. The current system still works well in terms of the present requirements and standards regarding capacity and safety, but it is outdated. Even further optimisation of the system will not permit the desired step-change in train protection (Ministerie van Infrastructuur en Milieu, 2014). The need to replace this system provides an opportunity to extend the coverage of the ERTMS, which has already been installed on various sections of the rail network (Ministerie van Infrastructuur en Milieu, 2014). The Ministry of Infrastructure and the Environment, ProRail and NS are working on the further introduction of this system in the ERTMS programme.

According to the Ministry of Infrastructure and the Environment, the introduction of ERTMS Level 2 opens up opportunities for higher capacities and speeds and increases the reliability of rail transport (Tweede Kamer, 2014a and 2014b). The Kuiken Committee was of the same opinion in 2012 (Tweede Kamer, 2012). Moreover, this committee contended that less new track would have to be laid if the ERTMS Level 2 was introduced. Replacing the existing safety system with ERTMS Level 2 is expected to provide a greater level of safety and more interoperability (making cross-border



services easier to operate). In addition, the national government also expects potential reliability benefits for the passenger (Tweede Kamer, 2014b). An aspect that does need to be looked at is the successful operation of ERTMS Level 2 in large railway yards because as yet this has not been confirmed in practice (Ministerie van Infrastructuur en Milieu, 2014). ERTMS has to be built into the rolling stock and the rail infrastructure, which is a complex business involving ProRail and the rail operators (Visitatiecommissie Zelfevaluatie Spoorwetgeving, 2008).

ERTMS Level 2 delivers the greatest benefits (especially on capacity and speed) on the busiest lines (known as the 'PHS corridors'). The benefits are not as great for the regional lines because these lines have fewer passengers and because many regional lines are fitted with ATB-NG¹⁵, which has more or less the same functionality as ERTMS Level 1. On these lines that are not TEN lines the Netherlands has decided not to introduce ERTMS Level 2 before 2028.

Connection between Dutch and European developments

As previously mentioned, the preferential decision for ERTMS Level 2 was taken quite separately from the European decisions on the Fourth Railway Package. On the introduction of the ERTMS the Netherlands is currently in the implementation stage of the policy cycle described by Rli (see Figure 1 in Part 1). The development of the Fourth Railway Package, which includes the introduction of the ERTMS, is in the stage of negotiation at the

European level. The Dutch ERTMS programme has representatives at the European level (including in the ERA), who ensure that any relevant lessons learned regarding the technical specifications of ERTMS at the European level are passed on.

Introduction of the ERTMS elsewhere in Europe

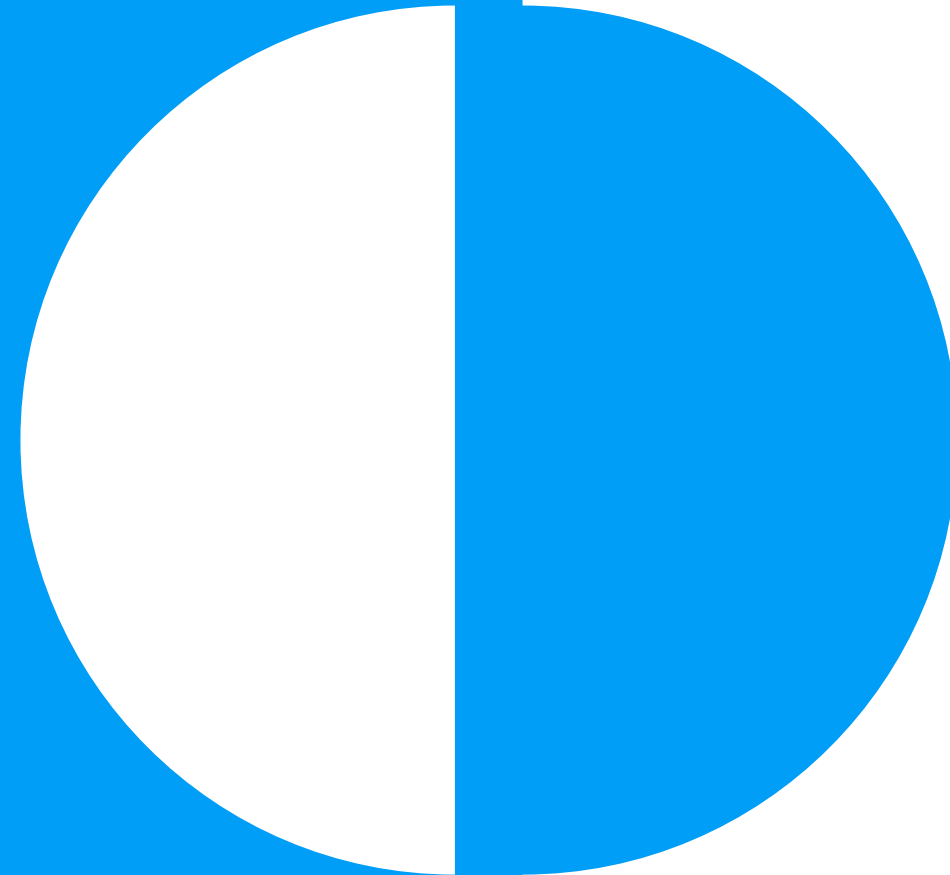
Other European countries already introducing the ERTMS include Belgium, Denmark, Norway and Switzerland. The Netherlands is actively looking to cooperate with these countries on the implementation of the ERTMS. Belgium, like the Netherlands, is replacing its outdated train protection systems and will be rolling out a mix of ERTMS Level 1 and Level 2 until 2022. ERTMS is a significant improvement on some of the protection systems currently in use in Belgium. The sequence of replacement is determined by the degree to which the functionality of the existing systems is restricted. After 2022 the intention is to switch completely to Level 2. Denmark aims to fully introduce ERTMS Level 2 before 2021, making it the frontrunner in Europe. An intense exchange of knowledge and experience is taking place between the Dutch and Danish ERTMS programmes. Regarding the use of ERTMS in large yards mentioned above, the possibility of learning from experiences in Austria is currently being investigated. The United Kingdom has also recently decided to introduce the ERTMS.

¹⁵ Automatische Trein Beïnvloeding Nieuwe Generatie (Automatic Train Protection New Generation)

Reflection:

- The Fourth Railway Package is currently in the negotiation stage. It proposes a radical opening of the market for passenger rail services (market pillar) and eliminating administrative and technical obstacles to the safety and interoperability of the European rail network (technical pillar). Negotiations on the technical pillar of the Fourth Railway Package at the European level have now come to a conclusion.
- The technical pillar includes expansion of the ERA's powers and its role in the introduction of the ERTMS on the European rail network, which includes the development of detailed specifications for the European train protection and control system and compatibility between the Member States. The Dutch decision to introduce the ERTMS onto its rail network was taken quite separately from the European decisions on the Fourth Railway Package. As a consequence, the introduction of the ERTMS in the Netherlands is currently in the implementation stage of the policy cycle described by Rli (see Figure 1 in Part 1). The Dutch ERTMS programme maintains close contacts with its European counterparts, particularly regarding the technical specifications.
- The Netherlands and a few other countries (Belgium, Denmark) are leading the way with the implementation of the ERTMS (Level 2) in Europe. The development of the technical specifications for the system is based on the exchange of knowledge and experiences at the European level and between individual countries.





EUROPEAN STRUCTURAL AND INVESTMENT FUNDS

1. European Structural and Investment Funds: origin, purpose and development in brief

Towards economic, social and territorial cohesion

European regional policy, often referred to as the Cohesion Policy, aims to reduce regional differences across the EU by subsidising investments in the less developed regions. It is financed from the European Structural and Investment Funds (ESIF). This case study examines the ESIF relevant to environmental and planning policy in the Netherlands: the European Regional Development Fund (ERDF) and the European Agricultural Fund for Rural Development (EAFRD), the latter being an integral part of the Common Agricultural Policy (CAP). Cross-border cooperation is supported by the programmes for interregional cooperation, Interreg, which are financed from the ERDF.¹⁶

The Cohesion Policy dates back to the 1957 Treaty of Rome. A series of subsequent Treaty amendments strengthened the basis for the Structural Funds, which aim to promote economic, social and territorial cohesion and solidarity between Member States (Article 3(3) of the Treaty on European Union). Because the Structural Funds are linked to the cycle of multi-annual budgets, evaluation and sunset provisions are automatically built into the legislation. Evaluation and sunset provisions determine the time when the policy or programme has to be evaluated and the date when the legislation

or regulation concerned expires. These types of provisions ensure that at fixed times an evaluation is made of whether or not the circumstances which led to the establishment of the policy or piece of legislation have changed so that a decision to be made either to continue the policy or legislation (in the same or an altered form) or to end it.

The funds spent on regional policy are included in the EU's multi-annual budgets, which cover a period of seven years. The current period runs from 2014 to 2020. In this period more than a third of the total EU budget is reserved for the Structural Funds (€325 billion) and a similar amount for the CAP (€373 billion)¹⁷, which includes the EAFRD. The Netherlands receives about €1.7 billion from the ESIF for its regional and rural policies. This amount is supplemented with co-financing (see Box 7.1).

Box 7.1 Co-financing

Co-financing works as follows (Bos, 2013). Regional policy is set down in regulations containing the objectives and conditions for the specific policy. European funds are reserved for this policy and are divided among the Member States via an allocation formula. The Member States can only claim these funds by submitting suitable projects and programmes, for which they also provide a share of the funding. If they do not provide this funding the money reserved in the EU budget is not

¹⁶ Besides the ERDF, EAFRD and Interreg, the Netherlands can obtain support from the European Social Fund (ESF) and the European Maritime & Fisheries Fund (EMFF); less prosperous Member States can receive support from the Cohesion Fund.

¹⁷ The CAP is divided into a market and price policy (first pillar) and a Rural Development Policy (second pillar).

made available. Co-financing ensures that Member States contribute more directly to the cost of community policies, which encourages a more careful appraisal of the costs and benefits of policies and better ownership of the policies.

2. Agenda-setting, preparation, negotiation and design

Dutch attitude to the Structural Funds frustrates community action

Over the years the Netherlands has adopted a number of different positions on the Structural Funds. These differences can be attributed mainly to the difference between budgetary and policy matters, which also reflect differences within and between the different tiers of government. The differences between these positions relate mainly to a number of issues, which are presented here in a more or less chronological order, although these chronological phases overlap and the issues are still alive:

- *Reducing welfare differences and stimulating economic growth* – The creation of the Single Market should be accompanied by a reduction in welfare differences between regions. This is also in the interest of the Netherlands, because increasing purchasing power in the poorer regions will strengthen the markets for Dutch products. This position was held by the EU and the Netherlands from the establishment of the Structural Funds in the 1970s and remains an important consideration to this day. As a corollary of reducing welfare differences between regions, quality-of-life issues have also played an important role.
- *Reducing contributions to the EU* – The Netherlands became a net contributor in 1992 and argued for a reduction in contributions and not for an increase in payments from EU programmes, such as the Structural and Agricultural Funds. Other net payers argued for increases in contributions from the Structural and Agricultural Funds and ensured that these funds were used for their regional and rural development policies. On this point there were differences of opinion between various government departments in The Hague, but the official instructions to the Dutch negotiators in Brussels were clear: ‘reduce the level of contributions’.
- *Structural Funds for poorer Member States only* – From 1995 the formal position of the Netherlands was that the rich countries should be excluded from the Structural Funds policy. This position – to avoid countries simply getting back what they pay in – was not supported by most of the other Member States, even the net contributors. Again, there were differences of opinion on this issue between the government departments. The finance ministry took the official government line, while the policy departments were more interested in the opportunities presented by the ESIF. The regional and local authorities saw the opportunity of using the funds to increase their own budgets.
- *Using the Structural and Agricultural Funds for general economic and innovation policy in Europe* – Starting in 2000 a series of EU economic strategies were developed which have had an increasing influence on the direction of structural and agricultural policies (Lisbon Strategy, Europe 2020). The Netherlands adopted the same approach to the use of these funds, focusing on innovation and sustainability and emphasising

entrepreneurship, and looked for synergy opportunities with the Horizon 2020 Framework Programme for Research and innovation.

- *Making the Structural Funds available to all regions* – When the EU chose to open the Structural Funds to all regions, not just the poorer regions, as part of its general economic policy, most Dutch regions benefited. Northern Netherlands, which had already received funding, became a relative loser, but other Dutch regions now had access to these funds and became relative winners. Moreover, the decision by all Dutch government authorities to stimulate entrepreneurship and strengthen the more promising economic sectors in all regions put quality-of-life projects and the weaker regions at a relative disadvantage. Northern Netherlands and shrinkage regions in particular had problems with this during the initial stages of the rollout of national policy.

These different interests and positions make it difficult to develop a common vision at the national level and across the national, regional and local authorities and other parties. Other issues, such as quality of life and areas with a shrinking population and declining economic activity, are also important considerations in the regions. To bring these parties together, the national government and the regional and local authorities prepared a joint position paper on the future of the EU Cohesion Policy in 2010, more than a year before the start of negotiations on the 2014–2020 budget period (Tweede Kamer, 2010).

Influence from subnational government and society

The Code of Inter-administrative Relations (Code Interbestuurlijke Verhoudingen) contains arrangements for involving the regional and local authorities in the discussion of EU policies at an earlier stage. In addition, operational agreements have been made between the House of the Dutch Provinces in Brussels and the government ministers for internal and foreign affairs on presenting a unified front in negotiations on EU policy. Under these agreements the authorities will act in unison as much as possible, but where important interests and standpoints are at stake they may adopt their own position and agree to disagree. A good example of this is the negotiations on the Structural Funds.

Like companies and interest groups, many regional and local authorities have for a long time maintained a lobby in Brussels, usually via their representative organisations (Association of Netherlands Municipalities, Association of Provincial Authorities, Association of Regional Water Authorities, House of the Dutch Provinces, network of cities (the four big cities (G4) and the medium-sized cities (G32), Randstad provinces, etc.). They often disagree on various issues during the preliminary stage of negotiation on how the Structural Funds should be used, but despite these different viewpoints on how the ESIF should be used to support policy, the close cooperation between the national government and the regions has made it possible to agree on the European policy frameworks as well as on how these are translated into national policies and programmes.



In principle, individuals and local stakeholders can become involved in the European decision-making process as early as the preparation and negotiation stage. They can do this via the representative organisations and lobby offices in Brussels, but their input can also be facilitated at the national level. Considerable experience has already been gained with holding broad public debates in preparation for decisions on crucial topics. The former Ministry of Agriculture, Nature and Food Quality gained considerable experience with organising such public debates and drew on this experience during the preparatory stages of the reform of the EU's agricultural and rural development policy for the 2014–2020 programme period. Nevertheless, it is unlikely that all stakeholders and other interested parties can be reached, and doubtful that the government can do anything to effectively promote their engagement in the process, as the OECD asks (2014).

European impulse to regulate for legitimate expenditure

European money has played a special and often rather complicated role in the relation between the Netherlands and the EU and between the national government and the regions. The proper use of funds has been problematic for most Member States, including the Netherlands. The European knee-jerk response to this is to make more regulations to tighten up control over expenditure and demand more professional management of funds.¹⁸ The consequence is that application and reporting procedures, cooperation and lobbying activities, and mastering the state aid and tendering procedures are time-consuming and heavy on manpower. The Council for Public

¹⁸ The Netherlands, Denmark and Sweden are the only countries to have submitted a national statement by their national court of audit.

Administration¹⁹ argues that the Europeanisation of local authorities is changing the way they operate, from focusing on more instrumental, short-term objectives to integration of European policy concepts and practices into the core of their decision-making processes and internalising the regulations on the proper use of funds. This has been a learning process for all involved. During the negotiations on the ESIF the regional and local authorities were repeatedly consulted on issues regarding the feasibility of implementation.

In 2014 the OECD advised the Netherlands to provide assistance and training to regional and local authorities to help them perform their tasks better.²⁰

Reflection:

The European predilection for rules to prevent the improper use of funds has various effects: the stricter rules means that applying for funds and reporting on expenditure takes up a lot of time and effort, while the auditing process also seems to be more concerned with ensuring expenditure is properly accounted for rather than whether or not the objectives are being met.

3. Transposition of EU policy and directives into national policy

Regional economic policy: strengthening regional clusters

In the period 2007–2013 the Netherlands decided, in line with changes in thinking at the European level, to change its policy from attempting to

¹⁹ Rob (2013) *Met Europa verbonden*.

²⁰ OECD (2014). *Territorial Review the Netherlands 2014*. Paris.

achieve equal prosperity across all regions to supporting strong regions and strong clusters. This philosophy is set out in the Peaks in the Delta policy (*Pieken in de Delta*), which focuses on improving the entrepreneurial climate and attractiveness of the Netherlands as a business destination, and in the Top Sectors policy developed in 2010. This represents a change of course in Dutch policy from stimulating development in disadvantaged regions to concentrating funds on the strongest economic sectors in the region. The Netherlands is divided into six regions: Northern Randstad, Southern Randstad, South-West, South-East, East and North. Under this policy the economically stronger regions and subregions will be further strengthened. This change of course is also visible in the new regional economic policy supported by ERDF funding (Ministerie van EZ, 2014). As in the 2007–2013 period, ERDF funds are divided among four sectors of the country: North, East, South and West.

For the 2014–2020 period the Netherlands has decided to focus the operational ERDF programmes on innovation (Thematic Objective 1) and the low carbon economy (Thematic Objective 4). The operational programme for the West sector also contains integrated territorial investment programmes on Thematic Objective 8 (employment and labour mobility) and 10 (education).

Dutch ERDF funds are spent on regional area-based solutions within a clear national focus, which involves much interaction between the relevant government authorities. The Dutch ERDF programmes are deployed in regional clusters with specific growth potentials. Each region has its own

distinct knowledge theme that reflects the opportunities within the region and its knowledge institutes (smart specialisation), in recognition of regional differences and the lessons learned from past experiences (Braun & De Groot, 2014). From an article by Brendel (2015) and a number of interviews, we have identified three key success factors when determining these regional specialisations:

- a good match between the nationally and internationally oriented top sectors and the regional strategy (e.g. in the agro, biobased and water sectors);
- development possibilities for cross-overs between top sectors in the regional and thematic strategy;
- a good match between regional knowledge specialisations and the location of the R&D departments of multinationals.

For example, in the South sector the aim is to exploit emerging linkages between nationally and internationally oriented top sectors, R&D departments of multinationals and cross-overs between the top sectors.²¹ Moreover, the South sector's operational programme (OP-Zuid) also seeks to exploit cross-border linkages.²²

Rural development programme: learning effects and transitions

As in the 2000–2006 (RDP1) and 2007–2013 (RDP2) programme periods, for the 2014–2020 (RDP3) period there will be a single Dutch rural development

²¹ Brendel, M (2015) Kennisregiokaart van Nederland. Technisch Weekblad nr. 24.

²² OP-Zuid (2014) Operationeel Programma Zuid-Nederland 2014-2020. Versie 24 oktober 2014. Europees Innovatieprogramma Zuid-Nederland, EFRO

programme for the whole of the Netherlands. Whereas RDP1 and RDP2 were geared mainly to finding a match between European and national policy to generate co-financing, RDP3 has a clearer focus on innovation and sustainability and a responsibility for developing projects and finding matching funds in the region. Agreements on the implementation of RDP3 are made for each of the four sectors of the country and are implemented by the provinces. The idea is to create a coherent programme and keep the costs of implementation manageable.

The Dutch RDP3 contains the following six measures: knowledge transfer and information provision, physical investments, agri-environmental and climate measures, cooperation, total weather insurance and local development (LEADER). Unlike the previous rural development programmes (RDPs), RDP3 does not aim to promote tourism and recreation, quality of life, diversified rural development, or ICT. Accountability and verifiability of the measures are a priority so that errors and implementation costs can be kept to a minimum.

Agri-environmental management has a more prominent position in RDP3 compared with RDP2, partly as a result of the Rli 2013 advice *Onbeperkt houdbaar* (Unlimited life), which recommended using agri-environmental management schemes to support the management of protected areas by linking them together and coordinating farm conservation activities in the region. Such an integrated regional approach can be created by groups of farmers in agri-environmental cooperatives in consultation with other local and regional groups and government authorities. This is new and

will require a radical change in the system. The idea is that these local and regional parties tie the various social objectives for the region together in an integrated plan, while the concrete measures remain at the scale of the individual farm. Pilot projects have been held in preparation for the use of these collective initiatives (see Box 7.2).

Box 7.2 Agri-environmental cooperatives

Over the past 20 years or so the wider social benefits of agri-environment schemes have been questioned. In recent years the Netherlands has conducted pilot projects to investigate whether a collective approach to agri-environment can deliver better returns for society at lower costs than has been the case so far on an individual basis. The results are promising. The pilot projects indicate that in the collective approach the management measures can be more effectively geared to achieving the desired results, the individual farmers have less paperwork to do and the implementation costs are lower. In view of these positive results, the Netherlands has been given permission to implement its agri-environment support via cooperatives from 2016 (www.portaalnaturenlanschap.nl).

As mentioned earlier, during the reparation of the 2014–2020 programme period a broad public debate was conducted on the new CAP and what this means for the Netherlands, including the Dutch proposals in the European negotiations on the Rural Development Programme (RDP3) for this period.



Subsequently, a process was initiated with civil society organisations to draw up a national RDP3 supported by all parties for adoption by the national government and the provinces. Despite the efforts made to hold a broad public debate, many stakeholder groups (such as small municipalities and landowners) were still not aware of the EU and national proposals for the new RDP (RPD3), which was approved by the European Commission in February 2015.

Cross-border cooperation still underdeveloped

The EU has been encouraging cross-border cooperation since 1991. Money from the ERDF is used to finance projects to strengthen economic and social cohesion in the whole of the EU, supported by cross-border, transnational and interregional cooperation programmes (Interreg) in addition to the programmes for subnational regions.

When implementing Interreg programmes the national government and the provinces also look for ways local agendas can support national and provincial priorities. During the development of the Interreg programmes local authorities negotiate with their counterparts over the border, who in turn also have to take account of their own regional and national governments. The new possibilities for creating bodies governed by public law for cross-border cooperation – such as European Groupings for Territorial Cooperation (EGTCs) – has so far not led to any transfer of powers from the national to the regional level (see Box 7.3). The Association of Netherlands Municipalities (VNG) claims there is a need for a visible point of contact in The Hague for addressing and resolving

difficulties in cross-border cooperation. This point of contact should be responsible for raising these issue and where possible resolving problems, including by holding bilateral negotiations and promoting EU regulation (VNG, 2015).

Box 7.3 Cross-border cooperation

The aim of cross-border cooperation is to stimulate development in border areas and remove or prevent obstacles experienced by businesses and individuals to living and working over the border. The Cross-border Cooperation project (GROS) is run by the interior and foreign affairs ministries and aims to resolve specific problems in the border areas with Belgium and Germany and so stimulate cross-border cooperation and knowledge exchange. Exploiting economies of agglomeration and solving social issues at the regional level through cross-border cooperation can take various forms, such as Euregions, cross-border territorial cooperation and Benelux cooperation.

European Grouping for Territorial Cooperation (EGTC)

An EGTC is a cross-border body with legal personality established in European law. EGTCs make it easier for partnerships between Member States, regional and local bodies (public bodies) to jointly implement cross-border projects and programmes. EGTCs can apply for EU grants and employ staff, have their own budgets and can take independent decisions. This form of cooperative entity has not yet taken root in the



Netherlands. Many Dutch partnerships have other options available to them, including legal options, for initiating cross-border projects or programmes (VNG, 2014).

Identifying and removing border barriers to cooperation

Cross-border cooperation can deliver major agglomeration benefits if border barriers are removed. According to the 'Atlas of Opportunities', removing barriers between the border regions studied could potentially create many jobs for people living on the Dutch side of the border (Atlas van kansen, 2014; VNG, 2015). The border regions themselves want a 'border effect assessment' for new legislation. The government does not consider this to be necessary, but does want possible undesirable border effects to be identified and taken into consideration to improve decision-making, which it sees as the responsibility of the border regions themselves. These border effects are caused mainly by national policy differences between neighbouring countries, whereas European policy appears to resolve or reduce border effects (Universiteit Leiden, 2012). Border information points (BIPs) are being established in most Euregions for the identification of border barriers. Since 2015 six Euregions have been working on the development of a distinct 'brand' for the BIPs under the BorderinfoPoint label. Financing of these BIPs is guaranteed until 2018. Nevertheless, the border regions lack any structural funding for the BIPs and an effective office in national government dedicated to removing border barriers and creating room for experimentation (VNG, 2015).

For the 2014–2020 period the Netherlands will receive more funds for cross-border and transnational cooperation than before. The Netherlands' main priority for cross-border cooperation is to make more strategic use of the programmes for an innovative business environment, an environmentally friendly and resource-efficient economy, and labour mobility. Despite the geographical location of the Netherlands and the connections with neighbouring regions, the national borders prevent full use being made of the opportunities these present, conclude Ponds, van Woerkens and Marlet in their 'Atlas of Opportunities' (2014).²³ To further strengthen economic growth and innovative power in the border regions investments will be made in cross-border cooperation on innovation, sustainable energy and labour mobility. During the current period the cross-border cooperation programmes have not fully incorporated existing cross-border clusters and so the benefits obtained from the potential economies of agglomeration have been suboptimal. The Netherlands has therefore expanded some programme areas to include key towns and cities, companies and knowledge institutions in the province of Noord-Holland, the Dutch/Flemish delta and South-East Netherlands in the cross-border cooperation programme and the further development of cross-border networks and clusters. The United Kingdom has also be included in the border zone via the Two Seas programme (see Partnerschapsovereenkomst Nederland, 2014).

²³ Atlas van kansen; Ponds, van Woerkens en Marlet: <http://www.atlasvoorgemeenten.nl/product-informatie/115-atlas-van-kansen>



Reflection:

- The regions have an increasing part to play in preparing the policy framework for the ESIF and in how the money is spent.
- Choices made at the national and provincial levels can limit the opportunities in the border regions.

4. Implementation

Europe-proof deployment of European grants

The European funds are of value to subnational governments for realising local and regional policy goals that are consistent with European policy objectives. However, making use of European funds takes up considerable staff time as it involves submitting an agenda during the preparatory stage, cooperation and lobbying activities, learning to understand and interpret the rules – particularly on state aid – applying for funding, and reporting on expenditure. A European grant is not ‘free money’ (ROB, 2013): ‘The application process alone and, if the funds are awarded, reporting on how the money is spent, takes up a lot of time.’

The knowledge centre on European law in the Netherlands (Europa Decentraal) receives many questions from provincial and local authorities about how to apply for and spend European grants in compliance with EU state aid and procurement rules and provides a service for the 2014–2020 programme period called ‘Europe-proof deployment of European grants’. The knowledge centre is a vital source of information for the regional and local authorities. This pooling of resources allows authorities to submit

smarter applications and obtain greater benefits from EU rules, as well as incurring fewer risks in the implementation stage. The centre’s expertise and database is also a potentially important source of information for the EU to help it improve the regulations and reduce the administrative burden. The centre does not yet provide this information to the European Commission on a regular basis, but it does provide information to the provinces and municipalities and Ministry of Foreign Affairs (De Lange, 2015, p.84).

The Netherlands Enterprise Agency (RVO)²⁴ helps entrepreneurs and researchers to obtain grants and find partners. In the 2007–2013 period the Netherlands was highly successful in obtaining research grants (Ministerie van OCW, 2014).

Ensuring compliance by subnational authorities

With the adoption in 2012 of the Dutch law on compliance with European rules by public entities (*Wet Naleving Europese regelgeving publike entiteiten*) the national government is better equipped to ensure compliance by local and regional authorities when deploying funds for national and regional programmes (see Box 7.4).

²⁴ RVO.nl was established on 1 January 2014 by the merger of NL Agency and the Dienst Regelingen. It supports entrepreneurs in obtaining grants, finding business partners and compliance with laws and regulations. It is also responsible for the implementation in the Netherlands of many EU initiatives, including payments under the CAP. The National Contact Points, which help researchers with applications for project financing, have also been incorporated into RVO.nl.

Box 7.4 The Dutch law on compliance with European rules by public entities

The Dutch law on compliance with European rules by public entities (*Wet Naleving Europese regelgeving publieke entiteiten, NErpe*) provides the national government with a number of instruments to ensure better compliance with European law by public entities, which includes the regional and local authorities. If the European Commission considers that a Member State has not fulfilled its obligations, it can summon the Member State to appear before the Court of Justice of the European Union under the 'infringement procedure'. The European Commission may impose a fine or periodic penalty payments to enforce termination of the infringement. The Member State is then responsible for ensuring this happens. The NErpe Act gives the Dutch government a number of legal instruments to enforce 'public entities' to comply with EU legislation, including a special direction issued by the minister, the power to intervene directly to overrule subnational authorities and ensure a legal obligation is met, and a right of recourse to pass on a fine imposed on the Dutch government for failure to comply with European legislation. The earlier European Subsidies (Supervision) Act (*Wet TES*) was repealed when the NErpe Act came into force. A growing number of Member States have introduced legislation enabling the national government to make subnational authorities liable for failure to comply with or not implementing EU legislation. (Mastenbroek et al., 2013)

Reflection:

- Implementation requires a good knowledge resource and oversight. Europa Decentraal and the Netherlands Enterprise Agency have demonstrated that they can provide this knowledge and oversight.
- It is important to report problems with implementation to the relevant government administrations as soon as possible.

5. Monitoring, evaluation and reporting

Effectiveness, efficiency and correctness of expenditure

The Structural Funds and the effectiveness, efficiency and correctness of their use have been an issue right from the start. Do they really help to reduce welfare disparities between regions, are the fundamental principles underlying the EU observed, and are they not highly susceptible to fraud (Beugelsdijk & Eijffinger, 2005)? Much has changed since the Structural Funds were first established, but the European Court of Auditors and the Dutch Court of Audit remain critical of the way the funds are spent. The Court of Audit, for example, has for some years pointed out that ineffective and inefficient use of European funds is inherent in the current system, partly because of the way European grants are allocated to the Member States.

According to the Court of Audit there is still little information on what is achieved with the use of European money. The only thing that seems to matter about the implementation of European programmes is compliance with the rules, which is an explicit condition. But this overemphasis on



the rules means there is little attention to whether or not the grants are efficiently spent or achieve the desired effect. The selection of projects does take some account of their chances of success, but from then on, argues the Court of Audit, their effectiveness is no longer considered. The available information on completed projects is usually restricted to how efficiently they were run, with little or no information about what effect they actually had (Algemene Rekenkamer, 2014). The effects of programmes can often only be measured in the mid to long term, and even then it can be difficult to determine which investments and measures have led to which effects. All the parties to a programme and their submitted projects should contribute to the European objectives and meet the required conditions, but there are cases, including in cross-border programmes such as Interreg, where not all the parties involved seemed to be aware of this. Accountability could be improved if the EU and the national government make this perfectly clear to all involved and manage expectations.

In the 2014–2020 programme period the European Commission will focus more on results. To this end, financing from EU funds will depend in part on the degree to which the Member States achieve their Europe 2020 targets. An example of the tension that can arise between the European and Dutch perspectives during implementation is given in Box 7.5.

Box 7.5 Agri-environmental cooperatives: EU rules in a Dutch context

If farmers' cooperatives and farm conservation groups draw up a management plan and receive a grant from the CAP RDP to implement the plan, the farmers involved forfeit their right to apply for individual agri-environment grants. Initial experiences with agri-environmental cooperatives show that tensions can arise between the European perspective and the Dutch approach to implementation because the European control regime is geared towards individual farmers and not cooperatives. This has led to several issues being raised regarding the implementation of policy for agri-environmental cooperatives, one of which is how results should be measured. The EU measures the achievement of ecological objectives per species, whereas the Netherlands works with a habitat approach with detailed objectives set down in provincial plans. The measurement system is not yet mature enough to provide adequate measurements of the baseline situation, the results of measures and their effects. Also, too little is known about how to adapt measures to ensure the intended results can still be achieved. The first European mid-term review takes place after three years, but the effects of agri-environmental management can only really be seen after many years.

There are also differences between EU and Dutch regulations regarding the possibilities for making changes. EU regulations permit changes to be made to management plan within certain limits, and to implement changes directly. However, under Dutch administrative law changes



must be notified to the inspection or auditing body five days before they are implemented. If the changes are carried through sooner the collective may be penalised following an unannounced inspection.
(Based on interviews)

Reporting

Since 2007 the Netherlands has been preparing national statements to the European Commission on how EU payments, including payments from the Structural Funds, are spent. In this statement the finance minister, on behalf of the government, declares how EU funding for which the government has shared responsibility is spent in the Netherlands. The national statement is made to the European Commission and the Dutch parliament. The Dutch Court of Audit issues an opinion on the national statement to the Dutch parliament each year. According to the Court of Audit, the government's national statement for 2014 provides an accurate picture of the spending of this European money in the Netherlands. The option of preparing voluntary national statements was included in the EU's Financial Regulation, partly at the insistence of the Netherlands. Besides the Netherlands, so far only Denmark and Sweden have published national statements (Algemene Rekenkamer, 2014). In its 2015 Trend Report the Court of Audit repeats its call for EU wide introduction of these national statements.

Besides the separate audits of the European Court of Auditors and the Dutch Court of Audit, European programmes in the Netherlands are also subject to audits by the European Commission and the Central Government

Audit Service. The Central Government Audit Service is responsible for certifying the paying agencies that transfer European grants to the recipients. Annual progress reports are made on the programmes and these are also discussed in progress interviews. In addition, financial reports containing prognoses are prepared three times a year and random inspections are held. From interviews with various parties it can be concluded that the financial inspection and control regime has a paralysing effect on the capacity to contribute to programme strategies and objectives in the preparatory stage and leads to high costs.

The University of Twente has carried out research into the costs of EU rules to subnational government authorities. One of the interviewees in the study said the following about the pressures of the financial control regime for the Structural Funds: 'The cause is not so much the EU regulations on these funds, but their interpretation by the auditing agencies in the Member States. At the moment this results in ... an unreasonably high administrative burden' (De Lange, 2015).

Monitoring and evaluation of programmes

The data collection and monitoring and evaluation systems for the expenditure of Structural Funds are being continually improved. Monitoring and evaluation are important for reporting on policy and expenditure, both to the EU and to the national and regional government authorities. The interpretation of policy and use of funds are the joint responsibility of the European and national/regional authorities, which makes it essential to ensure that the various monitoring and evaluation



systems are compatible and provide the information that is needed. The European Commission needs data to compile context, result and impact indicators for its report on policy planning, monitoring and evaluation (Common Monitoring and Evaluation Framework (CMEF)).

Reflection:

- The overemphasis on rules gives the impression that little attention is given to whether or not the grants are efficiently spent or achieve the desired effect.



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APPENDICES

LIST OF ABBREVIATIONS

AIV	Adviesraad voor Internationale Vraagstukken / Advisory Council on International Affairs
ATB-NG	Automatische Trein Beïnvloeding Nieuwe Generatie / Automatic Train Protection New Generation
BIP	Border Information Point
BNC brief	Beoordeling Nieuwe Commissievoorstellen (contains the Dutch government’s position on new or revised European Commission proposals).
BuZa	Ministerie van Buitenlandse Zaken / Ministry of Foreign Affairs
BZK	Ministerie van Binnenlandse Zaken / Ministry of the Interior
CAP	Common Agricultural Policy
CMEF	Common Monitoring and Evaluation Framework
CoR	Committee of the Regions
Council	Council of the European Union
EAFRD	European Agricultural Fund for Regional Development
EC	European Commission
EESC	European Economic and Social Committee
EGTC	European Grouping for Territorial Cooperation
EL&I	Ministerie van Economische Zaken, Landbouw en Innovatie / Ministry of Economic Affairs, Agriculture and Innovation

EMFF	European Maritime and Fisheries Fund	IPO	Interprovinciaal Overleg van en voor provincies / Association of the Provinces of the Netherlands
EP	European Parliament		
ERDF	European Regional Development Fund	LNV	Ministerie van Landbouw, Natuurbeheer en Voedselkwaliteit / Ministry of Agriculture, Nature Management and Food Quality
ERMTS	European Rail Traffic Management System, the European standard for train protection and control		
ESF	European Social Fund	LTO Nederland	Land- en Tuinbouworganisatie Nederland / Federation of Agriculture and Horticulture
ESIF	European Structural and Investment Funds		
EU	European Union	MKB Nederland	Industry association for SMEs
Europa 2020	The EU's growth strategy, succeeded the Lisbon Agenda	Natura 2000	European network of sites for the preservation of habitats and plant and animal species of European importance
EZ	Ministerie van Economische Zaken / Ministry of Economic Affairs	NCP	National Contact Point
G32	Partnership of medium-sized cities in the Netherlands	NEN	National Ecological Network
G4	Partnership of the four biggest cities in the Netherlands: Amsterdam, Rotterdam, The Hague and Utrecht	NGO	Non-governmental organisation
HNP	Huis van de Nederlandse Provincies / House of the Dutch Provinces in Brussels	OECD	The Organisation for Economic Co-operation and Development
Horizon 2020	EU Framework Programme for research and Innovation	PBL	Planbureau voor de Leefomgeving / Netherlands Environmental Assessment Agency
IAK	Integraal Afwegingskader / Integrated Assessment Framework	PSO	Public Service Obligations
IBDT	Interbestuurlijk dossierteams / inter-administrative portfolio teams	RDP	Rural Development Programme RDP1: 2000–2007, RDP2: 2007–2013, RDP3: 2014–2020
IBO	Interdepartementaal Beleidsonderzoek / Inter-ministry policy review	RECRO	Vereniging van Recreatieondernemers Nederland / Association of Recreation Entrepreneurs
IenM	Ministerie van Infrastructuur en Milieu / Ministry of Infrastructure and the Environment	RLG	Raad voor het Landelijk Gebied / Council for the Rural Area
Interreg	European Territorial Cooperation Fund	Rob	Raad voor het openbaar bestuur / Council for Public Administration



RVO	Rijksdienst voor Ondernemend Nederland / Netherlands Enterprise Agency
RVW	Raad voor Verkeer en Waterstaat / Advisory Council for Transport, Public Works and Water Management
UvW	Unie van Waterschappen / Association of Regional Water Authorities
VNG	Vereniging van Nederlandse Gemeenten / Association of Netherlands Municipalities
VNO-NCW	Ondernemersorganisatie in Nederland / Confederation of Netherlands Industry and Employers
Wet NERpe	Wet Naleving Europese regelgeving publieke entiteiten (law on compliance with European rules by public entities)
Wet TES	Wet toezicht Europese subsidies / European Subsidies (Supervision) Act
WFD	Water Framework Directive



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ADVISORY COUNCILS ON EUROPEAN POLICY

This appendix provides an overview of published advisory reports relating to the subject matter of this report. It is not intended as exhaustive.

Advisory Council on International Affairs (AIV): multiple reports

Public Support for the European Union: Building Trust (2014)

In its advisory report 'Public Support for the European Union: Building Trust' the AIV states that, "Brussels is not a foreign power" but an extension of national politics. In order to overcome the current crisis in confidence in Europe, national politicians should be more vocal about their policy on the EU and make clear choices. According to the AIV, "popular support for the EU is waning and citizens are unconvinced about the value of European integration. The debate on Europe in the Netherlands is still predominantly carried out within the circle of elites and EU specialists. At home, officials and policymakers do not stand behind the stances they took in Brussels and blame 'Europe' for unpopular decisions for which they are themselves partly responsible. This undermines support for the EU." The AIV had already extensively argued this point in its 2012 advisory report.

The AIV advocates taking a multi-track approach for reducing public mistrust. On the one hand, this entails improving the democratic legitimacy of the EU. The AIV feels the European Parliament – as the representative of

European citizens – can play a part, but national parliaments, institutions and procedures are also crucial. National parliaments can use democratic control mechanisms such as the yellow and orange card procedures more effectively than they do at present. On the other hand, the AIV feels that the debate on the EU needs to be politicised at both the national and European level. This means that points of contention on European issues should be elucidated and discussed openly. According to the AIV, the House of Representatives can play an important part in this by, for example, holding online consultations.

The Netherlands and the European Parliament (2012)

The AIV advisory report 'The Netherlands and the European Parliament' focuses on the increased influence of the European Parliament as a result of the many new powers it gained under the Lisbon Treaty, which entered into force on 1 December 2009. In almost all policy areas, the European Parliament now has almost as much voice as the European Council in the legislative process. In addition, the European Parliament has been given say over all EU expenditures. Its supervisory powers over the European Commission – and to a certain extent also vis-à-vis the European Council – have also been strengthened. The increased power of the European Parliament offers an opportunity to national governments to influence EU decision-making.



The AIV believes that the image people have of the European Parliament, whether positive or negative, is closely tied to the capacity of European politics to achieve results (output legitimacy), the existence of a recognisable democratic government (input legitimacy) and the extent to which the political debate does justice to these two types of legitimacy. The AIV advocates increasing the involvement of national parliaments. Citizens feel more strongly connected to their national MPs than EMs. National representatives can also act as a crucial link between national and European decision-making. This requires better coordination of debates taking place in the European Parliament and the House of Representatives. Whenever crucial topics are being discussed in the European Parliament, these should be put on the plenary agenda of the House of Representatives. Synchronising the political debates will allow the issues being dealt with in the European Parliament to become part of national politics.

The AIV feels that the tenor of the political debate needs to change. Politicians reap what they sow: “In the past, politicians often created a false dichotomy between The Hague and Brussels and sometimes talk derisively about European institutions. This does little to help citizens identify with the EU.”

The AIV also feels that there is room for improvement in working with interest groups. The Netherlands can become even more successful in ‘Brussels’ if interest groups, the national government and parliament all work together.

Council for the Rural Areas (RLG): European integration and regional diversity (2000)

This advisory report concerns the role of the former Ministry of Agriculture, Nature and Fisheries (LNV) as an intermediary between the EU and regions in light of developments occurring at the time. This included the reorientation of agricultural policy in response to public needs, international market pressure and increasing environmental and land-use problems in rural areas. The report also addresses the changing policy environment of the Ministry of Agriculture, Nature Management and Fisheries: a change in governance, the increasing importance of the regions, and the growing influence of the EU and of global environmental and trade standards. The report pointed to the reduced participation of the Netherlands in EU policy resulting in part from the complexity of regulation and decision-making and the damage in trust between government authorities and social partners. The RLG advised the minister to give shape and substance to his input in EU policymaking by means of a new partnership with the region.

Council for Social Development (RMO): advisory reports and publications

Heart for Europe (2003)

In its report ‘Heart for Europe: the role of the Dutch government’ the RMO makes a number of proposals to increase the involvement of Dutch citizens in the EU. The RMO feels that the national government should focus its efforts on a participation strategy that outlines how to bridge



the gap between 'Brussels' and the Dutch public. This can be done by increasing the visibility of Dutch EMP decisions, a monthly interview with the president of the European Commission and by complementing the TV-show 'Den Haag vandaag' [The Hague today] with one called 'Brussel vandaag' [Brussels today].

The RMO feels these kinds of initiatives are needed because the Dutch public and the government are increasingly cynical about the EU and even oppose it. This attitude must and can be changed by framing the EU as a reality that influences our lives in all kinds of ways, by stressing the need for active involvement of citizens from a democratic point of view and by calling attention to social cohesion with respect to issues like EU enlargement.

Plurality of National Interests (2014)

In the edited volume *Plurality of National Interests [Nationaal belang in meervoud]*, the RMO looks at the impact of internationalisation on the stability of Dutch society. It is sometimes hard to draw the line between what is 'national' and what is 'international' in a Netherlands that is increasingly part of the world and in a world that is increasingly part of the Netherlands. This was the rationale behind asking a number of scholars to write essays on the theme 'Dutch interests in an international perspective'.

Council for Public Administration (Rob): advisory reports and publications

The Rob has written on the relationship with the EU on multiple occasions over the years.

Connected to Europe (2013)

In late 2013, the Rob published its advisory report 'Connected to Europe: a survey of the significance of Europe for municipalities and provinces' [*Met Europa verbonden; Een verkenning van de betekenis van Europa voor gemeenten en provincies*]. In this report, the Rob states that the EU is a fact of life for municipalities and provinces, regardless of whether it is considered a problem or a solution. About 70% of European legislation is implemented by municipalities and provinces, making them very important for the achievement of EU objectives. Subnational government authorities are increasingly confronted with EU rules on public procurement, state aid, environmental policy, infrastructure, public services, agriculture and transport. The association of Dutch municipalities (VNG) and provinces (IPO) and the Union of Water Boards are correct when they say: "for us, Europe has become a domestic matter: the political arena in The Hague has been extended to Brussels."

The on-going decentralisation in the Netherlands has shifted tasks and responsibilities to subnational authorities. At the same time, proposals are being made for more centralisation, harmonisation and coordination at the EU level, especially with respect to the economic and social policies of the Member States.



Municipalities and provinces wishing to influence the European policymaking should be clear about which topics are most fruitful for entering the European arena. Overlapping (and thus promising) topics can be identified by comparing the EU's policy agenda to one's own. In order to have the message carry extra weight, it is moreover useful to cooperate with municipalities, regions or networks with shared interests.

In the 2014-2020 budgeting period, EU Structural Funds will continue to be important source of revenue for subnational authorities to realise local and regional policy aims that correspond to EU objectives. Increasingly, other EU sources are being used to fund regional and local ambitions. An EU subsidy is not 'free money' however: it costs a lot of time to apply for subsidies and report on how they were spent. It makes sense to set up a central desk for European subsidies in provinces and large and medium-sized municipalities.

Participating in European knowledge networks and other forums offers practical benefits to municipalities and provinces: Europe is an open space where almost 500 million people live and work and where about 80,000 municipalities face comparable challenges in the areas of sustainability, immigration, urbanisation, public health, youth unemployment, safety and the like. Various policy networks and transnational partnerships exist for subnational authorities with a common interest, even if they do not border one another physically. These transnational networks have a functional character. As the networks grow, their participants increasingly view Brussels as the capital of European regions.

Europe, citizenship and democracy (2012)

The Rob's edited volume 'Europe, citizenship and democracy' [*Europa, burgerschap en democratie*] contains ten essays written by mostly junior scholars [@Rli: redundant text omitted]. The volume consists of three parts. The first examines what citizens think about the EU and how national politicians act as a bridge between the two. The second part concerns the position of the EU in the daily activities of individuals and businesses. The third part calls for fundamental democratic reform.

Governing over borders (2008)

In its report 'Governing over borders: challenge for all administrative levels' [*Besturen over grenzen; Opgave voor alle bestuurslagen*] the Rob sketches the current state of affairs in the seven Euroregions in the Netherlands. How do these Euroregions function? What contribution do they make to the social and administrative challenges in border regions? What can be improved and what role should the national government play in this? Individuals, businesses and government authorities in border regions face specific challenges and opportunities, and it is precisely here that differences in national legislation can pose problems. This means that the national government should remain attentive to the needs of border areas, for example, by setting up a taskforce or hiring a 'border broker'. A readily recognisable central source of information for cross-border cooperation (GROS) can provide further support to subnational authorities. Finally, a 'border check' can prevent national policy from having detrimental effects for border regions.



Cross-border cooperation: reflection and recommendations (2010)

In its report 'Cross-border cooperation: reflection and recommendations' [*Grensoverschrijdende samenwerking: terugblik en aanbevelingen*], the Rob investigates how its 2008 'Governing over borders' advisory report was followed up. The report found that the national government still needs to focus its efforts on removing barriers to cross-border cooperation, as this is very important to the economic development of these regions. The Rob proposes two plans of action. The first should consist of a programme for the (Euro)regions supported by the national government. The second should be a national programme that links cross-border cooperation to major issues such as population decline and superregional infrastructure.

Advisory Council for Transport, Public Works and Water Management (RVW): On interests, policy and citizens (2011)

In its advisory reports in recent years, the RVW has searched for keys to more successful governing. In addition to the national level, the RVW increasingly views Europe – specifically the EU as a partnership between Member States – as a driving force behind Dutch policymaking and implementation. The Dutch economy is completely intertwined with the global economy and Dutch networks completely embedded in international, European and global systems. In order to reach its national objectives, the Netherlands will need to safeguard or strengthen its position within the international arena. At present, this is not happening sufficiently. Another example regards the transposition of European directives: the RVW found that not enough attention was being paid to the possible effects. A case in point is the implementation of the directive on particulate

matter, which led to considerable problems in urban development. Without sufficient care and attention, the designation of Natura 2000 sites and implementation of the Marine Strategy Framework Directive carry similar risks.

Social and Economic Council of the Netherlands (SER): EU environmental directives in the Netherlands (2006)

In 2006, the SER turned its attention to EU environmental directives (Habitats Directive, Air Quality Framework Directive, Water Framework Directive) in the Netherlands. The report investigated the extent to which the problems experienced were a result of clashing values and interests, whether they were contained within the directive itself or if national implementation was to blame.

The SER concluded that, for the three environmental directives examined, European intervention was legitimate from the point of view of subsidiarity. It also found evidence of competing values and interests that needed to be brought into balance with respect to these environmental directives. It also found that the – ultimately political – choices resulting from this were insufficiently recognised, even though they still had to be made explicitly, soundly and at the right level of scale. Furthermore, the implementation of the Habitats Directive and Water Framework Directive fell short, creating many problems in practice. The SER's recommendations concerned:



- Acting proactively and strategically prior to decision-making
- National interest in Europe
- Expanding EU coordination
- Need for a solid implementation plan
- Regard for careful implementation
- Relationship with spatial planning.

VROM-Council: The Impact of European Environmental Policy in the Netherlands (2008)

In its advisory report 'The Impact of European Environmental Policy in the Netherlands: National Characteristics and Choices Make the Difference' ('Brussels Lof'), the VROM-Council points to the fact that various characteristics of the Netherlands (e.g. high population density, environmental pressure, location in a river delta and the nature and extent of administrative law oversight) significantly influence the impact of European law and policy in practice. Consequently, the effect of EU directives in policy areas relating to the former Ministry of Housing, Spatial Planning and the Environment (VROM) can be quite different from that of other Member States. This analysis set a different tone as regards the problems experienced in the Netherlands when implementing EU directives. A workable implementation of European law and policy can be achieved by taking advantage of the latitude offered by EU legislation during transposition and application. In order to achieve a better fit between EU legislation and the national situation, the VROM-Council indicates in its recommendations how the characteristics specific to the

Netherlands can better be taken into account within the complex European arena, at the EU level and certainly at the national level.

The VROM-Council stresses that one can be more mindful of impacts that could arise from national specificities already in the earliest phases of EU policy preparation. The effect of European law and policy is strongly affected by national administrative, legal, geographic, economic and cultural characteristics. National impact assessments are needed which take the specific characteristics of the Netherlands into account. Especially in policy areas where potential implementation or application problems can be expected (but also those which, due to their nature, can have far-reaching consequences), the latitude given by EU legislation should be actively explored during transposition. This can be done by, for example, investigating how other countries interpret, translate and apply certain requirements. The VROM-Council also believes that it is not the EU directives in themselves, but the (conscious or unconscious) national choices made in the past, which were responsible for the particular impacts of some EU legal provisions in the Netherlands.

The VROM-Council feels that the way the Dutch system of administrative legal protection functions greatly influences the impact of EU law and policy. Courts in the Netherlands are relatively accessible and the legal protection offered by administrative law is used comparatively frequently. As a result, the consequences of EU legislation, environmental or otherwise, have become more readily visible in the Netherlands than elsewhere.



Recommendations

- Throughout the entire European legislative procedure, pay more attention to any effects that can be expected of EU law and policy given the specific Dutch situation and make better use of the opportunities the EU offers to the Netherlands. Do this by means of impact assessments, territorial assessments and bringing the implications clearly into view for contiguous policy areas.
- Keep arguing for sufficiently strict EU environmental quality standards. In adopting these standards, no concessions should be made as to their clarity, but discretionary room needs to be created to be able to take the specific situations of Member States into account.
- Explore, partly by way of comparison with other Member States, the discretionary room that EU law offers in transposition and application, where potential problems can be expected in this regard and the policy areas that could have far-reaching consequences in light of one's own specificity.

Scientific Council for Government Policy (WRR): advisory reports and publications

Separate worlds? (2014), with The Netherlands Institute for Social Research (SCP)

There is a sociocultural divide between those with high and low education in the Netherlands. This manifests itself politically in extremely different opinions on sensitive issues such as immigration, the EU and politics in general. The opposition manifests itself as a social rift as well. Both groups

inhabit separate social networks and differ in their cultural tastes. The contrast between high and low levels of education can lead to unease, and there is a palpable risk of mutual avoidance. This coproduction with the Netherlands Institute for Social Research (SCP) maps out a number of sociocultural contrasts. The first part consists of an international comparison, the second discusses political contrasts and opposing worldviews in the Netherlands, and the third part explores the extent to which those with high and low education live in 'separate worlds'.

Rediscovering Europe in the Netherlands (2007)

The main research question behind this advisory report is whether, and if so how, politicising European issues can help bridge the gap found between Dutch citizens and the EU. It raises the question of how to promote the social imbedding of the EU in view of the roles which the various societal parties can play.

The WRR stresses the great importance of national politicians and officials for the future legitimacy of EU policy: "They will need to take the lead in identifying important European issues and topics and make choices regarding the objectives they wish to pursue. Moreover, they will need to be much more explicit in expressing these choices and account for them in front of parliament, political parties, social groups and the media. Only then will Dutch citizens accept EU policy as legitimate. It is – for the time being – also the only way to lay the groundwork for Dutch citizens identifying themselves with the EU. Proposals are made in the report for developing

favourable conditions for bolstering the legitimising role of national politicians and officials.

Attached to the world (2010)

The WRR report 'Attached to the World' also explicitly looks at the relationship with the EU: "Europe is our dominant arena and it is a political arena. Whoever wants to exert influence, needs to excel here. This does not mean being nice, but being the best." The WRR concludes that a reorientation towards the EU is required; the Dutch need to work differently in this relationship. The EU is after all not a foreign, but a domestic affair. In this, the European Council is the most important institution in the European political arena. The prime minister's role should be more prominent. In order to operate to the best of his ability in the European Council, the prime minister, who holds ultimate responsibility, should be able to act and the different ministerial departments should supply him with policy options on the various issues. The Ministry of General Affairs should be transformed into a Ministry of General and European Affairs.

The WRR also points out that the EU is by far the best body to promote the interests and values of the Netherlands. "Europe is becoming a smaller place in a bigger world; this is even more true for smaller Member States within a bigger EU." For some issues, even Europe is too small and require global governance, such as food security, energy, climate change and financial stability.



OVERVIEW OF PUBLICATIONS

2015

Changing Trends in Housing: flexibility and regionalisation within housing policy ['Wonen in verandering, over flexibilisering en regionalisering in het woonbeleid']. June 2015 (Rli 2015/04)

Fundamental Reform of Environmental and Planning Legislation ['Stelselherziening omgevingsrecht']. May 2015 (Rli 2015/03)

Circular Economy: from wish to practice ['Circulaire economie, van wens naar uitvoering']. June 2015 (Rli 2015/02)

Survey of Technological Innovations in the Living Environment ['Verkenning technologische innovaties in de leefomgeving']. January 2015 (Rli 2015/01)

2014

Managing Surplus Government Real Estate: Balancing public interest and financial gain ['Vrijkomend Rijksvastgoed: over maatschappelijke doelen en geld']. December 2014 (Rli 2014/07)

Risks Assessed: Towards a transparent and adaptive risk policy ['Risico's gewaardeerd: naar een transparant en adaptief risicobeleid']. June 2014 (Rli 2014/06)

Recovering the costs of environmental damage: Financial indemnity to be provided by high-risk companies ['Milieuschade verhalen: advies financiële zekerheidsstelling milieuschade Brzo- en IPPC4-bedrijven']. June 2014 (Rli 2014/05)

The Future of the City: The Power of New Connections ['De toekomst van de stad: de kracht van nieuwe verbindingen']. April 2014 (Rli 2014/04)

Quality without Growth: On the Future of the Built Environment ['Kwaliteit zonder groei: over de toekomst van de leefomgeving']. April 2014 (Rli 2014/03)

Influencing Behaviour: More effective environmental policy through insight into human behavior ['Doen en laten: effectiever milieubeleid door mensenkennis']. March 2014 (Rli 2014/02)

Living independently for longer – a shared responsibility of the housing, health and welfare policy domains ['Langer zelfstandig, een gedeelde opgave van wonen, zorg en welzijn']. January 2014 (Rli 2014/01)



2013

Sustainable choices in the implementation of the common agricultural policy in the Netherlands ['Duurzame keuzes bij de toepassing van het Europees landbouwbeleid in Nederland']. October 2013 (Rli 2013/06)

Pulling together: Governance in the Schiphol/Amsterdam Metropolitan Region ['Sturen op samenhang: governance in de metropolitane regio Schiphol/Amsterdam']. September 2013 (Rli 2013/05)

Safety at companies subject to the Major Accidents Risks Decree: responsibility and effective action ['Veiligheid bij Brzo-bedrijven: verantwoordelijkheid en daadkracht']. June 2013 (Rli 2013/04)

Dutch Logistics 2040: Designed to last ['Nederlandse logistiek 2040: designed to last']. June 2013 (Rli 2013/03)

Nature's Imperative: Towards a robust nature policy ['Onbeperkt houdbaar: naar een robuust natuurbeleid']. May 2013 (Rli 2013/02)

Room for Sustainable Agriculture ['Ruimte voor duurzame landbouw']. March 2013 (Rli 2013/01)

2012

Keep Moving: Towards Sustainable Mobility (edited by Bert van Wee). October 2012 (Rli/EEAC)



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