

# ***Code on Inter-administrative Relations***



## Introduction

**The Code on Inter-administrative Relations contains agreements that contribute to successful interplay between government authorities as they join forces in their efforts to tackle the challenges facing society more rapidly, more effectively and on a democratic legitimate basis. The overall aim is that we as government are a reliable partner, for each other and for our citizens, businesses and civil society organisations.**

Central government, provinces, municipalities and water authorities together bear responsibility for the good governance of the Netherlands. How we fulfil that task is the subject of the inter-administrative relations. This code lays down the rules for interaction between all these authorities. These rules of behaviour form the underlying principles for mutual cooperation and task allocation. Good inter-administrative relations between central government, provinces, municipalities and the water authorities are essential in realising the common objectives, overcoming the problems facing Dutch society and fulfilling ambitions.

The challenges for society are felt at local, regional, national, European and global level. These challenges are often relevant at many of those levels, and solutions are beyond the capacity of a single tier of government. Finding those solutions demands sound cooperation between all tiers of government. Moreover, the changing environment in which we as government authorities operate makes it crucial that we continue to focus attention on the nature of that interplay and the engagement of society.

The Inter-administrative Programme (2018-2021) delivers a new boost to the cooperation between national, provincial and municipal authorities and the water authorities. The report by the *Study group Inter-administrative and Financial Relations* 'Als één overheid. Slagvaardig de toekomst tegemoet!' (2020), also underlines the need for cooperation between the various tiers of government. Wherever government authorities work together on tackling the challenges facing them, they do so on the basis of equal partnership, in which each party contributes according to its own expertise, responsibilities and capacities.

The urgent need to continue to focus on the inter-administrative relations, and the standards on which those relations are based, is among others reflected in the final report on the assessment of the decentralisation policy 'Beginselen versus Praktijken' (Principles versus Practices) commissioned by the Ministry of the Interior and Kingdom Relations (BZK) and drafted by the Stichting Decentraalbestuur.nl (2020), the recommendations about inter-administrative relations issued by the Advisory Division of the Council of State on 24 March

2021 at the request of the Minister of the Interior and Kingdom Relations in consultation with the Association of Provincial Authorities (IPO), the Association of Netherlands Municipalities (VNG) and the Association of Water Authorities (UvW) and the advisory report 'Rust-Reinheid-Regelmaat. Evenwicht in de bestuurlijk-financiële verhoudingen' published by the Council for Public Administration (ROB) in March 2021.

On behalf of the citizens and businesses of the Netherlands, we work together as one government. The UvW, the VNG, the IPO and central government have drawn up this revised Code on Inter-administrative Relations with a view to achieving a better match with the social developments of today and tomorrow.

The agreements between the various tiers of government outlined in this code are mutual. In other words, every individual government authority recognises that they have their own responsibility for the functioning of our public administration and that the choices they make may have consequences for the responsibilities of other tiers of government.

Experience has shown that not only are the agreements themselves important, but specifically also the way in which they are perceived and implemented. The UvW, the VNG, the IPO and central government will make every effort to maintain the vitality of the code, and to support it with sound case studies.

Throughout the code, reference is made to municipalities, provinces and water authorities. In principle, the code also applies to the Caribbean public bodies. Wherever this is not the case, it is specifically referred to in the explanatory notes to the article in question.



## Underlying principles

### Article 1

The underlying principles for inter-administrative relations are:

- The objectives or cooperation and task implementation are drawn up in mutual consultation and provided with appropriate and clear role allocation.
- The greatest possible degree of policy freedom for local authorities.
- Adequate funding for the package of tasks in joint administration via an appropriate form of payment.
- Only the necessary inter-administrative information will be requested (in accordance with the rules of play for inter-administrative information, hereinafter referred to as the IBI rules of play).
- Accountability for and simplification of rules with a view to safeguarding correct implementation. The underlying principle for inter-administrative supervision is the framework as contained in the Revitalisation of General Supervision Act. This is in line with the principle of legitimate expectations that applies between government authorities/tiers of government.

### Article 2

- a. Wherever government authorities work together to tackle the challenges facing them, they do so on the basis of equal partnership, in which each party contributes according to its own expertise, responsibility and capacities.
- b. For the citizens, businesses and civil society organisations of the Netherlands, the various tiers of government work together as if they were one government.

### Article 3

In the case of new tasks, consultation will take place regarding to whom a task can best be entrusted, according to the principle 'local where possible, central where necessary'. This same principle shall apply if there are grounds for revising the allocation of tasks as a result of changes in the environment or issues.

## Time and approach for mutual involvement

### Article 4

- a. Government authorities will involve each other in new policy proposals that affect another tier of government at such a time that the policy proposals can still be amended.
- b. Following completion of central government proposals, including draft legislation and regulations, a formal consultation period of two months will follow. This is a maximum period; where possible, local authorities will respond sooner. In the event that local authorities were already involved in the policy process, central government and the local authorities will reach agreements on a shorter term for an administrative response.
- c. Internet consultation can take place simultaneously with formal consultation of the (umbrella bodies of) local authorities, but will not replace the formal consultation.

## Insight into consequences of policy proposals.

### Article 5

- a. In the event of policy proposals relevant for provinces, municipalities and water authorities, central government will provide an insight into the administrative, financial- and practical consequences, including - if applicable - arrangements for supervision, the rules of play for inter-administrative information exchange, applicable implementation assessments and the elaboration in the various geographical regions, at an early stage.
- b. Granting insight into the administrative, financial and practical consequences means that for all drafts for legislation and regulations that affect local authorities, the arguments and motives on the basis of which compliance with the underlying principles as referred to in Articles 1, 2 and 3 can be evaluated are specified in the *Uitvoerbaarheidstoets decentrale overheden* (UDO - Government implementability assessment).
- c. Central government will reach agreements with local authorities on (further) external (scientific) research conducted with a view to gaining insights, arguments and motives for draft legislation and regulations that affect inter-administrative relations. The costs for this research will be charged to the government department concerned.

\* in accordance with article 2 of the Grants to Local Government Act (Fvw)

## (Inter-)administrative cooperation

### Article 6

- a. In designing (inter-)administrative arrangements, an assessment will be made of which government authorities and other actors must be involved in the design of the arrangement concerned, given its relevance or consequences.
- b. For the sake of effective policy, priority will be given to a tailor-made approach with options for differentiation in control and implementation.
- c. In the preparations for inter-administrative arrangements, it will also be determined whether the existing set of instruments (including the nature and scale of financial resources) is sufficient to enable the (local) authorities to correctly implement the arrangements.

## Cabinet information and formation

### Article 7

During the Cabinet information and formation period, the ministers of the Interior and Kingdom Relations and of General Affairs will call upon *informateur(s)* and *formateur(s)* on behalf of central government to consult with the chairpersons of the IPO, the VNG and the UvW whenever, during the information and formation period of a new Cabinet, discussions are held relating to the joint societal challenges for national and local tiers of government in the new Cabinet period and the applicable (inter-)administrative and financial relations.

## Government consultation

### Article 8

As soon as possible following the installation of a new Cabinet, a government consultation will be held with the chairpersons of the IPO, the VNG and the UvW. The subject of discussion will be the relevant policy proposals from the government agreement for local authorities, inter-administrative cooperation and the role of local authorities in fulfilling societal challenges, with respect for each other's position.

## Europe

### Article 9

Based on the subsidiarity principle, the European Union (EU) will only act if the Member States cannot sufficiently realise the objectives at central, regional or local level<sup>\*\*</sup>. For the allocation and implementation of tasks, the underlying principle will be the level of administration closest to the citizen unless this is ineffective and/or inefficient. The underlying principle is that agreements with local government authorities on national dossiers also apply *mutatis mutandis* for European dossiers. For that reason, national and local tiers of government will enter into dialogue with each other at the earliest possible phase of policy preparation to assess new European policy proposals for their administrative and financial consequences (including administrative burdens) for the provinces, municipalities and water authorities.

Wherever EU dossiers have consequences at local level, central and local authorities will investigate the possibilities for cooperation at the earliest possible stage. In respect of these dossiers, in all phases of the policy cycle (initial phase, negotiation and implementation), they will as far as possible work together (for example on the basis of inter-administrative dossier teams) and will make use of each other's networks. Local authorities and central government will retain the freedom to act independently.

National and local government authorities each contribute specific expertise. The umbrella organisations of local government authorities will consult their members. National and local tiers of government will maintain confidentiality in respect of shared information.

Local government authorities will actively use the possibilities offered by their membership of the Dutch EU consultation bodies. Financial and administrative consequences of European regulations for local authorities must be charted out by central government, prior to their implementation.

<sup>\*\*</sup>Article 5 of the EU treaty, protocol no. 2 regarding the application of the principles of subsidiarity and proportionality.

## Evaluation and advice

### Article 10

The parties value evaluation of the agreements in this code and hereby agree to make use of the following possibilities:

- a. The Minister of the Interior and Kingdom Relations may call upon the Advisory Division of the Council of State to issue advice on the inter-administrative relations on the basis of Article 21a of the Council of State Act.
- b. The Minister of the Interior and Kingdom Relations will issue such a request for information following consultation with VNG, IPO and UvW.
- c. To request advice on specific issues, the Minister of the Interior and Kingdom Relations will make use of the possibility offered by Section 17 (2) of the Council of State Act which specifies that the government will also hear the Advisory Division of the Council of State on all matters in respect of which the government considers advice necessary.
- d. Information as intended sub a. will be discussed in the government consultation and may result in reassessment of the inter-administrative agreements reached.
- e. For advice on other policy fields than inter-administrative relations in general (e.g. financial issues), the more obvious approach is to consult an (ad hoc) committee of experts. Agreement must be reached between the parties concerning the composition and assignment awarded to this committee.
- f. The results of the advice as intended under e. will be directly notified to the umbrella organisations of local authorities involved in the matter. The advice and the actions to be taken in response to that advice will return to the government consultation, for discussion.

## Binding nature and compliance

### Article 11

- a. The Minister of the Interior and Kingdom Relations and where relevant the Minister of Infrastructure and Water Management will promote awareness of and compliance with the code within central government. The umbrella organisations of local authorities will promote awareness of and compliance with the code among their members. Inter-administrative relations will be discussed at least once a year in consultation between the Minister of the Interior and Kingdom Relations and the umbrella organisations VNG, IPO and UvW. The financial relations will be discussed by the Ministers of the Interior and Kingdom Relations and Finance with the umbrellas of the local government authorities in the Administrative Consultation on Financial Relations.
- b. Compliance with this code cannot be enforced by law.

## Explanatory notes to the articles

### Explanatory notes to the introduction

The background to the amendment of the code is the underlying principle from the Inter-administrative Programme (IBP 2018-2021) to work together as one government. The societal challenges of today are felt at local, regional, national, European and global level. They often occur simultaneously at multiple levels and their solutions are not within the scope of a single tier of government. A growing number of societal challenges can only be solved if municipalities, provinces, water authorities and central government collaborate as one government in respect of their partners.

Also new are the terms reciprocity and equality.

The code contains agreements on interaction between the various tiers of administration and thereby distinguishes itself from other codes such as the Code of good public administration, which is aimed at individual citizens.

In the code readopted in 2013, the emphasis was placed on the individual responsibility of the various government authorities according to the question: is this a question for you, or not? In this code, the emphasis is on smooth interplay between government authorities: joining forces in order to tackle the societal challenges more rapidly, more effectively and on a legitimate democratic basis. Reliable partnership for our citizens, businesses and civil society organisations.

The updating of the code was prepared jointly by the VNG, the IPO, the UvW and the Ministry of the Interior and Kingdom Relations.

### Explanatory notes to articles 1, 2 and 3

Articles 1, 2 and 3 outline the underlying principles for inter-administrative relations between national, provincial and municipal government and the water authorities. These articles relate among others to cooperation, the implementation of tasks, policy freedom, financing, implementation, accountability and supervision. Unlike municipalities and provinces, water authorities are functional administrative bodies to which specific tasks are entrusted. These tasks are laid down in the Water Authorities Act and the Water Act. The Water Act relates to generic supervision of the water authorities (section 3.13 (3)). Specific supervision for functional management also remains a possibility.

With regard to financing for municipalities and provinces, the underlying principle is that the costs of the tasks of joint governance are reimbursed (Section 108 (3) Municipalities Act and Section 105 (3) Provinces Act). The water authorities are subject to the fiscal regime pursuant to the Water Authorities Act.

The payment system must make it possible to establish a financial arrangement appropriate to the administrative arrangement. When a new task is allocated to a province or municipality, the first underlying principle is financing via the Municipal or Provincial Fund, but in the event that the implementation of the task offers little policy freedom, another form of payment such as a specific payment could be more appropriate. With regard to the financing of the water authorities, the underlying principle is that they operate their own system of taxes for their funding. Situations may however arise in which central government awards a contribution to the water authorities. A payment of this kind will be issued within the parameters of the Water Authorities Act.

Article 2 is new. This article lays down the underlying principles of equal partnerships in cooperating in the implementation of tasks and cooperation by the various tiers of government as if they were a single government. The approach to inter-administrative cooperation is discussed further in Article 6.

#### **Explanatory notes to article 4**

This Article specifies that government authorities involve each other in good time in relation to new policy proposals that affect another tier of government. For the provinces, municipalities and water authorities, this also includes informing each other in the formation phase before a new political agreement is entered into regarding subjects relevant for the government authorities concerned.

The completion of central government proposals is followed by a formal consultation period of not more than two months. The formal consultation of the (umbrella organisations of) local authorities is almost always required, on the basis of the Municipalities Act. Section 114 (3) of the Municipalities Act and Section 112 (3) of the Provinces Act specify that there is no obligation to obtain a judgement in advance if this is not possible as a consequence of urgent circumstances. In that case, the judgement will be sought and published, as quickly as possible. Section 57 of the Water Authorities Act and Section 209 of the BES Public Bodies Act contain a similar reservation.

The consultation response from the (umbrella organisations of) local government authorities must be specifically considered in the explanatory notes to regulations, and this administrative response is an integral part of

the legislative documents that are sent to the Council of State and the House of Representatives.

Subsection c has been added to Article 4 regarding internet consultation. This has been added to clarify that internet consultation will take place in addition to - and not instead of - the consultation of the (umbrella organisations of) local authorities. Internet consultation is a method of consultation via the internet, in which citizens, businesses and organisations are informed via the website [www.internetconsultatie.nl](http://www.internetconsultatie.nl) about legislation and regulations or policy under preparation, and via which they can issue a response. The Minister can issue a generic response to internet consultation. Internet consultation takes place regarding all legislation (bills, Orders in Council and ministerial orders), unless relating exclusively to technical amendments or the one-on-one implementation of EU regulations. In those case, internet consultation is optional.

#### **Explanatory notes to article 5**

This article relates to gaining an insight into the consequences of new policy for local authorities. This ties in with Section 2 of the Grants to Local Government Act (Fvw), which is applicable to municipalities and provinces. With the addition of 'and water authorities', the equivalent position of the water authorities is emphasised in respect of the provision of insights into the consequences of new policy by central government. The water authorities are subject to the fiscal regime pursuant to the Water Authorities Act.

A reference is also included to the Government implementability assessment (UDO) which was introduced with the aim of assisting in the design of policy that is both implementable and effective. The investigation on the basis of Section 2 Fvw (and where applicable Section 108 (3) Municipalities Act and Section 105 (3) Provinces Act), is an integral part of the UDO. For the water authorities this is translated slightly differently given the closed financial management, the functional management and the fiscal regime. The costs of an implementation assessment (for example arising from the UDO) are charged to the policy department concerned.

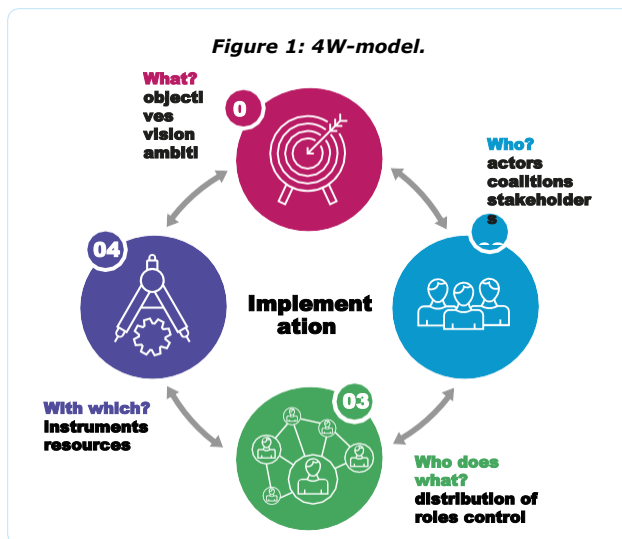
A passage has also been added relating to gaining insight into the implementation of policy in the various regions. A generic policy can have undesirable unequal consequences in the different regions of the Netherlands. Moreover, attention for regional-specific or area-specific characteristics (for example border effects) can contribute to making policy more effective.

A subsection c. has also been added to this Article, the intention of which is that other government authorities also be closely involved in external (scientific) research on which new central government regulations are based (in part). This approach is often already employed in practice, and is hereby laid down in the code. This may for example relate to (scientific) policy studies but also research carried out in the framework of a UDO.

### Explanatory notes to article 6

This article was added in response to the final report 'Als één overheid' conducted by the study group Inter-administrative and Financial Relations (2020) that was drawn up at the request of the Administrative Consultative Body on Financial Relations (BOFv), a consultative body of the joint governments. The report contains a study into bottlenecks in inter-administrative cooperation and proposed solutions for those bottlenecks.

The study group designed a model for inter-administrative cooperation. The so-called 4W model considers four questions: what are the task and the objective, who is needed, who does what (distribution of roles and management) and which instruments are needed? The model takes the form of a circle because the answers to the four questions form a coherent whole. Depending on the context and the nature of the task, the result on each occasion is a tailor-made approach or arrangement for cooperation. This article ties in with the so-called 4W model developed by the study group, but the model is not reproduced in full. It relates above all to the initial phase, the design of an arrangement.



### Explanatory notes to article 7

This article expresses the importance of consulting local authorities in good time during the information and formation of the Cabinet, in respect of societal challenges and the applicable administrative and financial relations. The latter according to the principle that this updated code is based on the fact that the challenges facing society have often become so complex that they can no longer be tackled by a single tier of government, but that multiple tiers of government are required to cooperate in order to face up to those challenges.

In the explanatory notes from the Council of State about inter-administrative relations, the report from the Study Group on Inter-administrative and Financial Relations and the report 'Principles versus Practices', the recommendation is issued that local authorities should be better involved in the Cabinet formation and the government agreement. The text has therefore been adjusted in such a way that the Ministers of the Interior and Kingdom Relations and General Affairs, submit a request on behalf of central government to the *formateur* and *informateur* to consult the chairpersons of the IPO, VNG and UvW if, during the formation and information process for a new Cabinet, there are discussions about the joint societal challenges for national and local government authorities in the new Cabinet period, and the inter-administrative and financial relations.

### Explanatory notes to article 8

In the code, government consultative bodies from the forum for administrative consultation. Government consultation, headed by the prime minister, serves as the forum for the discussion of inter-administrative subjects. The discussion of subjects will result in agreements between the Cabinet, IPO, VNG and UvW. The Ministers of the Interior and Kingdom Relations and Finance and the chairpersons of the IPO, VNG and UvW are permanent participants.

Depending on the agenda, other ministers, IPO, VNG and UvW board members or external experts will also participate. Article 8 states that following the start of a new Cabinet, a government consultation will be organised as quickly as possible. The Minister of the Interior and Kingdom Relations will duly take the initiative.

### Explanatory notes to article 9

This provision was added in 2013 and is also included in this code. The underlying principle is that agreements with local government authorities on national dossiers also apply *mutatis mutandis* for European dossiers. It is therefore specified in this article that national and local government must enter into dialogue with each other in the earliest possible phase of policy preparation to assess new European policy proposals for the administrative and financial consequences for the provinces, municipalities and water authorities. The official session with European experts from government departments and umbrella organisations reveals that this provision is effective and need not be updated.

With regard to the assessment of financial consequences, the issue is to map out the financial consequences, and unlike the specifications in Section 2 of the Fvw, to also indicate how the financial consequences can be compensated for.

Nevertheless, central government is free, without a statutory provision, to specify via which financing method, the financial consequences for the provinces or municipalities can be compensated for, in respect of European policy.

The situation is different in the event of joint governance on the basis of Section 108 (3) of the Municipalities Act or Section 105 (3) of the Provinces Act. In those cases, central government is obliged to fund these tasks. This for example applies to costs for implementation of European law converted into national law (European Directives converted in national law) and additional costs in the implementation of regular joint governance tasks, in particular European policy and regulations that result in complications and additional costs (framework setting regulations, such as tendering law, the Services Directive, the GDPR and in certain cases also the SDG regulation).

Because the Caribbean public bodies are not part of the territory of the EU, but do enjoy 'overseas countries and territories' (OCT) status, this provision does not apply directly to the Caribbean public bodies.

#### **Explanatory notes to article 10**

This article contains the possibility of consulting the Advisory Division of the Council of State on inter-administrative relations. The Minister of the Interior and Kingdom Relations issues a request of this kind in writing, following consultation with VNG, IPO and UvW. The four-yearly review by the Advisory Division of the Council of State is hereby replaced by an information note on the basis of Section 21a of the Council of State Act.

Because above all the timing and scope of the submitted questions are relevant, this article does not specify how often an information notice is issued during a Cabinet period. Possibilities include an information notice shortly following the publication of a government agreement concerning the consequences of that agreement for inter-administrative relations.

The information notice can cover different topics in the field of inter-administrative relations. It is important that the Minister of the Interior and Kingdom Relations and the umbrella organisations agree in advance on the specific questions to be submitted. If questions affect the water authorities in particular, this too will be discussed with the Minister of Infrastructure and Water Management.

An information notice will be followed by a (joint) reaction from the Cabinet and the umbrella organisations.

Article 10 (e) raises the possibility of consulting an (ad hoc) committee of experts on financial issues. Agreement must be reached between the parties concerning the composition and assignment awarded to this committee.

#### **Explanatory notes to article 11**

This article specifies that the Minister of the Interior and Kingdom Relations must promote awareness of and compliance with the code within central government. The umbrella organisations will promote awareness of and compliance with the code among their members. Attention for the importance of this aspect was also called for in the introduction.

This article also specifies that inter-administrative relations must be discussed at least once a year in a consultation meeting between the Minister of the Interior and Kingdom Relations and the umbrella organisations of the VNG, IPO and UvW. Financial relations will be discussed by the Ministers of the Interior and Kingdom Relations and Finance and the umbrella organisations of local authorities, in the BOFv.

A subsection was added to this article emphasising that the code cannot be enforced in law.

#### **Publisher's details**

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