Main points on simplifying environmental planning legislation in The Netherlands

Summary

In 2010, the government agreed to submit proposals integrating and simplifying environmental legislation. This plan was based on the conviction that new instruments, anchored in a comprehensive Environmental Planning Act, would enable better and faster decision-making and create the legal conditions needed for sustainable, effective development of the human environment.

Fifteen acts of parliament will in any event be integrated in full into the Environmental Planning Act. Two acts will be repealed, and environmental elements from around 25 acts will also be incorporated into the new Act. This will result in comprehensive legislation providing adequate, future-proof instruments to tackle societal problems in the extensive field of the human environment in the Netherlands.

1. Developments in the human environment

The reason for a review of environmental law is that current and future challenges concerning the human environment cannot be tackled effectively using the current instruments, which are based on a whole range of statutory regulations.

Growing interconnectedness between projects and activities: In a country as built up as the Netherlands, it is often difficult to meet societal challenges relating to economic development, flood protection, supplies of raw materials, water and sustainable energy, housing, accessibility and agriculture while at the same time protecting environmental quality, nature and cultural heritage. Since these challenges are interconnected, sectoral solutions for development and protection are having less and less effect.

Transition to sustainable development: Much of current environmental legislation evolved from legislation that was drafted primarily to meet the need to protect the local environment, and local residents, from nuisance and pollution. Sectoral regulation generally made the local consequences of the rapid economic growth of the last century fairly manageable. But it calls for an ongoing effort. However, awareness is growing both at home and abroad that the short-term culture of

'growth through resource exhaustion' – with cumulative or insidious side-effects, even though these are acceptable at local level – has to be transformed into a culture of 'growth through sustainable development'. We must not exhaust the earth's natural capital. Yet at the same time, our economy needs strengthening. In the Sustainability Agenda, the government has set out a green growth strategy, and has indicated that it will ensure smart, efficient policy, with legislation to match.

Customised regional solutions: The National Policy Strategy for Infrastructure and Spatial Planning shows increasing differences between the dynamics driving regions in the Netherlands, so that customised solutions are called for. Half of the municipalities in the Netherlands are confronted with shrinking populations. In other parts of the country, particularly the areas around Amsterdam and Utrecht, demand for new housing, for example, is still high. Regional differences are increasing in rural areas too.

Need to act rapidly and respond to demand: Society expects government to respond rapidly to initiatives, and does not want to be confronted by conflicting rules and procedures that are unnecessarily complicated and time-consuming. Frameworks need to be clear, and planning procedures must be more predictable, and thus less expensive and more transparent. This applies to both private and public parties.

Guiding principle: need for coherence, flexibility and customisation

Whether we are talking about a water storage facility, urban regeneration or construction of a railway line, road or nature area, the interests and competences of several parties will always be involved, to a greater or lesser degree. This may involve common, small-scale activities, or multiple, complex, interconnected challenges within a given area. In relation to these issues, members of the public, businesses and government authorities are often

confronted with incoherent statutory frameworks in the field of environmental legislation, all of which have been drafted from different viewpoints. These statutory frameworks interfere with each other, and are in a state of constant flux. They comprise dozens of acts of parliament, more than 150 orders in council and hundreds of ministerial orders. Every act of parliament, and the delegated legislation accompanying it, has its own distribution of responsibilities, procedures, time limits and so on. The resulting complexity leads to uncertainty and a lack of clarity about proposed projects and activities among the parties taking the initiative for them. This in turn leads to long lead times and high research and other costs, while stunting innovation. This government is committed to enhancing the quality of the human environment in the Netherlands by facilitating developments and activities. This can be achieved by focusing more on connections between the various sectors, by allowing more scope for regional and local initiatives and by developing instruments that can respond more flexibly to new trends and new demand.

2. Development of environmental planning legislation

2.1 Optimisation by sector

In recent decades policy has been developed for each sector – housing, work, infrastructure, nature, agriculture, cultural heritage, water, soil, air, noise, aviation and spatial planning – in both The Hague and Brussels. For each sector, decision-making procedures and protection levels against negative impacts have been specified in legislation and plans. These systems of sectoral legislation have proved their worth over the years. Slowly but surely, however, awareness has grown that decision-making is too slow, and that procedures have become too complicated. In response, there has been a move to speed up and simplify procedures in various sectors of environmental planning law.

2.2 More fundamental system change needed

The amendments to legislation that have been enacted in the past few years were necessary and have yielded results, but we have reached the limits of what can be achieved through sectoral optimisation. Scope within the sectoral systems to speed up and simplify procedures and improve the quality of the human environment is becoming exhausted. Referring to the developments described under 1, the challenge remains of ensuring that the societal problems of the future can be addressed efficiently and transparently. The challenge now facing us is to strengthen the cohesion between sectors, address conflicting legislation and simplify environmental planning legislation as a whole.

3. Principles underpinning the Environmental Planning Act

In drafting the Environmental Planning Act, the following principles will be applied:

- *Maintaining existing levels of protection;*
- *development-driven and integrated*;
- *more closely in line with EU legislation*: the system's working method will be closely aligned with EU directives. Section 5 of this letter examines the European dimension in more detail;
- *based on existing division of responsibilities of governmental authorities;*
- *trust in government and private parties as the departure point.*

4. New Environmental Planning Act instruments

4.1 Core of the Environmental Planning Act

The Environmental Planning Act will in any event replace 15 existing acts of parliament and incorporate numerous plans and decisions. The main changes are:

- *More streamlined environmental legislation*: Six instruments are central to the Environmental Planning Act. They replace the dozens of instruments now available in environmental law. The six instruments will ensure a uniform shape and structure for standards, planning and decision-making in the field of the physical environment. They are the environmental planning strategy, programmes, general rules, environmental by-laws, environmental permits and project decisions.
- *Efficient research*: high-quality research to underpin decisions continues to be of great importance. However, it needs to be carried out faster and more efficiently. This will be achieved by:
    - integrating the environmental impact assessment and project decision procedures;
    - prolonging the period of applicability of research data and according more certainty to their status;
    - increasing scope to re-use research data;
    - scrapping research obligations.
- *More flexibility*: Instruments include a generic provision on equivalence when applying general rules, a generic provision for a programmatic approach, application of the principle of positive proportionality, and a generic experimental scheme in the Environmental Planning Act. This will give government more scope for action to improve the quality of the human environment, and create more scope for regional and local initiatives, thereby allowing a more adequate response to the needs of individuals and businesses.

4.2 Efficient research

High-quality research data are essential in providing a solid basis for decisions. There are, in practice, two problems. First, more is often researched than strictly necessary and second, the research process has become unpredictable. That is why more efficient research will be incorporated into the Environmental Planning Act as a new objective. The new Act will set out research obligations far more efficiently by tying the environmental impact assessment (EIA) more closely to decision-making, by extending the period of applicability and re-use of research data and scrapping some research obligations.

Integration of the EIA

The aim is to make better use of the EIA in decision-making and to simplify procedures. First, publication of an intention to reach a project decision will also function as notification of the intention to draw up an EIA. Second, the Environmental Planning Act will allow the competent authorities to ensure that this statement is a more integral part of the total package of information needed to reach a decision. The scope and level of detail of the EIA will be tailored to the nature and size of the project or plan and its relationship to the human environment, so that it is better aligned with the decision. Studies of alternatives to a project will be limited to those that have potential and are useful for decision-making.

Third, the EIA assessment system for projects for which an EIA may be obligatory will be simplified. The EIA assessment and simplified EIA assessment as set out in the current legislation will be combined into a single, simple method for assessing whether an EIA is required. Fourth, the independent EIA quality assurance system will be simplified, and the responsibility of the government authority concerned for assuring the quality of the EIA will be given more emphasis.

Prolonged applicability and re-use of research data
Many data are often already available, particularly on the current quality of the human environment. If these are sufficiently up-to-date, they can be used for decision-making about a given activity. Under some legislation, data collected meticulously may be used for a period of two years. This makes decision-making procedures more efficient because new research is not needed in the interim. This provision will be extended to cover all environmental legislation.

Scrapping research obligations
The basic principle underpinning the provisions of the Environmental Planning Act that relate to research is that only the information needed for careful decision-making will be collected. The required scope and level of detail will be in line with this.

4.3 More flexibility

The Environmental Planning Act aims to provide more administrative discretion. To this end, it will introduce various instruments:

- generic regulations for the programmatic approach;
- flexibility at project level;
- a provision on experiments.

The government does not consider it desirable to offer more administrative discretion by means of a general relaxation of standards, because this would lower protection levels and run counter to the principles underpinning the Environmental Planning Act. Moreover, some standards, for example for air and water quality, have been set at EU level. Nonetheless, in resetting standards pursuant to the Environmental Planning Act, we will investigate whether the

reasons behind the choices made in the past still apply, and whether these standards affect decisions in such a way as to lead to unnecessary restrictions.

5. The European dimension

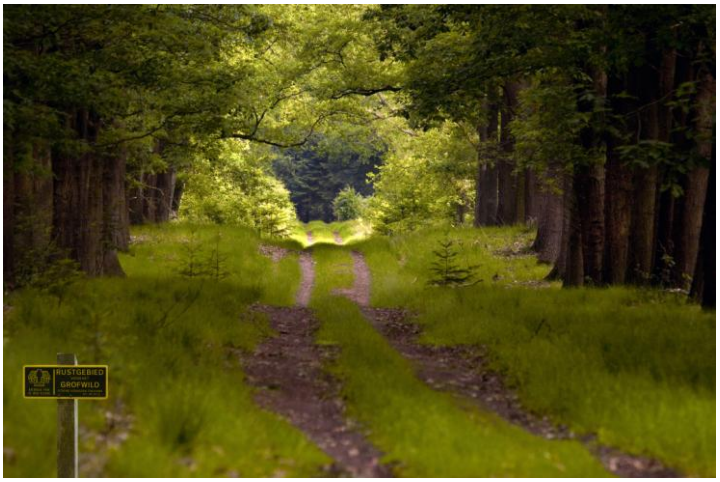
Around 25 area-related EU directives affect the Environmental Planning Act. The Act will be closely in line with EU legislation in terms of aims, terminology, instruments and so on. Such harmonisation, which also enjoys the support of the Council of State, will make it easier to transpose EU legislation into national law, and will make the legislation more accessible and remove ambiguities. Differences in definitions and instruments, with all the confusion and legal complications they entail, will be minimised by the Environmental Planning Act. The Act will ensure that, in the future too, environmental law is tailored to incorporation of EU legislation.

The Environmental Planning Act will contain more than *EU* environmental planning legislation. The EU is not competent in some domains where, from a national viewpoint, statutory regulations are needed. The Act will also contain regulations arising from the international agreements to which the Netherlands is party, in the framework of the Council of Europe and UNESCO, for example.

There are few areas in which stricter requirements are needed in the Environmental Planning Act than are contained in EU legislation. However, differences are experienced in competitiveness between member states. These may be the result of differing geographical circumstances, national policy, or enforcement, implementation or interpretation of the provisions of directives. With regard to

differences in interpretation, we will examine whether these are genuine differences, and whether they are necessary.

A point to which the Council of State rightly draws attention is that EU legislation itself does not always adopt an integrated approach to environmental law. In the future too, this will remain the subject of a development process within the EU, on which member states can exert influence. The government plans to play an active role in the coming period in the field of simplifying and integrating EU environmental planning legislation. In the past, the Netherlands has called with success for modernisation, framework directives and more comprehensive legislation in various fields within the EU. In the coming period, the Netherlands will call at EU level for a more integrated, modern approach to environmental legislation, both in general and on specific subjects, analogous to the development taking place in the Netherlands. To this end, it will also dovetail with the EU's Smart Regulation initiatives. More member states are calling for EU rules to be streamlined and integrated. The Netherlands is also committed to entering into a dialogue with European institutions and the other member states in which it will present the ambitions it is pursuing with the Environmental Planning Act. At the same time, the Netherlands can learn from the European Union, for example with regard to fitness checks (comprehensive reform of existing sectoral directives) and impact assessments (comprehensive assessments as part of the process of establishing new EU legislation).



6. Better environmental planning law calls for more than legislation alone

To ensure that environmental planning law is future-proof, more is needed than legislation alone. The administrative culture, and the organisation and preparation of decision-making (knowledge and expertise) are also important.

The Environmental Planning Act is thus part of a broad package of measures being taken by the government.

Wide application of the Elverding Committee's ideas: The ideas of the Elverding Committee on improving the administrative culture and the organisation of decision-making procedures will be applied on a broader scale in the physical environment, in addition to current use in infrastructure projects.

Professional development: With the entry into force of the Environmental Planning Act, attention will be devoted to the professional development of those responsible for facilitating policy and decision-making and for considering the various options, so that the quality and implementation of projects and measures will improve.

At the same time as environmental legislation is integrated, it is our ambition to improve implementation by the various authorities by streamlining and speeding up oversight, enforcement and back-office permitting processes. To this end, every agency involved will have to guarantee the quality of its implementation capacity, and information exchange, cooperation and harmonisation between them will need to run as smoothly as possible, so that companies are assured of a level playing field.

Transparent information: Environmental law benefits by systematic collection and widespread availability of area-specific information about the physical environment. This information relates in particular to environmental features and the possible impact of planned measures on them. The Council of State recommends setting up one or more national databases. The government will act on this recommendation, and will work out the details in tandem with the legislative process. The availability of area-level data is important in this regard, so that quality development can be placed in a broad, comprehensive perspective to enable the necessary steering by government. Points to keep in mind are available technological resources (ICT), authorisation of data, the currency of data and/or their 'shelf-life', the financial resources needed and whether information meets the needs of the various users.