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Environmental Assessment in the Netherlands: the current situation

In recent years there has been much discussion about the future of Environmental Assessment (EA) in the Netherlands. The government wishes to greatly speed up the decision-making on plans and projects, as there is much resistance to the long running time of projects and plans. Better preparation by government and officials, linked to administrative resolve, are seen as the key to acceleration. This does not alter the need to seek to simplify procedures and research obligations, including in EA.

The system as it is now

The Dutch EA system was fleshed out in 1980. Concomitantly, discussions were ongoing in the EU on the desirability and content of regulations at European level. In the Netherlands a deliberate decision was made to incorporate some extra elements, namely:

1. Scoping, with broad civic participation for everyone, consultation of administrative bodies, and advice from NCEA at the beginning of the EA procedure. It was opted to engage these parties in an early stage in order to prevent certain aspects or alternatives being overlooked, as at a later stage this could lead to delays in the publication of the EA report.
2. The obligation to describe alternatives – including the

most environmentally-friendly alternative – plus their environmental impacts. Alternatives were made an essential component of an EA. By so doing, the aim of the legislator was for the initiator of a project or plan to justify environmental impacts as early as the preparatory phase of a project or plan: in this way, the initiator was influenced to make a more environmentally beneficial final choice.

3. The mandatory review of the EA report by an independent advisory commission: the NCEA. At the start in 1980 there was discussion about whether an independent review was necessary in cases other than those that were 'potentially very serious for the environment'. But as this criterion proved to be difficult to flesh out and almost

all those whose advice was sought advocated a blanket obligation, a blanket obligation was incorporated in the legislation.

4. EA would not only be for projects, but also for a number of government plans, such as for the National Structure Plan for the Electricity Supply, the National Policy Plan for Industrial and Drinking Water Supply, and the allocation of residential and industrial areas.

Since then the functioning of the EA system has been independently evaluated several times¹. All the evaluations reveal that most value the objectifying role of EA and the role the NCEA plays in this. The enlargement of the general support for initiatives is seen as the most important added value. In the evaluations it is emphasised that in a country as densely populated as the Netherlands² where there are so many conflicting interests (house building, industry, infrastructure, health, nature conservation, landscape, safety) competing for the scarce space, it is essential for projects to have broad support if they are actually to be realised. An independent assessment of the quality of the environmental information by the NCEA is seen as a hallmark that contributes to that support. Furthermore, it appears that judges attach great importance to the NCEA's opinion of the quality of the information supplied.

But the evaluations also contain justifiable criticism of EA. Some of those involved - administrators in particular - criticise the inflexible procedural requirements, the comprehensiveness of the study and its associated costs in time and money. They argue that in relatively simple projects, EA should be embedded more in the decision making procedure. Describing alternatives is not seen as useful in all cases. In the case of environmental permits, the application of Best Available Techniques (BAT) has already drastically limited the scope for alternatives.

The numerous opportunities for civic participation and the way this civic participation is set up have been under fire for some time. Administrators and public servants see the current inflexible protocol for civic participation as a strait jacket and compulsory exercise. Stakeholders often do not see civic participation as useful, because their perception is that not enough is done with the outcome of the participation and the government has in fact already made its choice. They believe that a great improvement would be to ensure participation from the outset and during the preparation of the plan, instead of via formal civic participation.

In addition, there is a growing political desire to be in step with EU legislation as much as possible and not to lay down obligations unnecessarily in laws and regulations.

The result was years of debate on how to modernise EA. The implementation of Strategic Environmental Assessment (SEA) in 2007 did result in some modifications to the

procedural and substantive requirements. The momentum is continuing: a bill proposing modifications to the entire EA system is currently before Parliament.

What the new system is likely to look like

The bill proposing the modernisation of EA makes a distinction between:

- Environmental Impact Assessment (EIA) for simple permits;
- EIA for complex decisions and SEA for plans and programmes.

Simple permits are deemed to be the permit procedures linked to the Environmental Act (these are generally industrial projects) and in which there is no likelihood of possible impacts on Natura 2000 areas. The changes proposed for these relatively simple permit procedures are significant:

- Scoping on the basis of broad civic participation and an advisory NCEA report is scrapped and replaced by mandatory consultation of the administrative organs by the competent authorities.
- The requirement to describe the most environmentally-friendly alternative is scrapped, but the obligation to describe reasonable alternatives remains.
- The mandatory review by the NCEA is scrapped.

All other procedures for obtaining permits, including decisions about spatial planning, air traffic and infrastructure, are designated as complex projects.

In the case of EA for complex projects, plans and programmes there will be fewer changes.

- Scoping on the basis of broad civic participation and an advisory NCEA report on scoping are scrapped and replaced by mandatory consultation with administrative organs by the competent authorities, plus the obligation for the government body to make broad participation possible for everyone from the outset. So, civic participation at the beginning, at one fixed moment, is replaced by the obligation to offer all parties the opportunity to participate in the preparations from the outset. How this participation takes shape is not stipulated: the competent authorities are given free rein on this.
- The requirement to describe the most environmentally-friendly alternative is scrapped, but the obligation to describe reasonable alternatives remains.
- Civic participation in the review of the EA report and an NCEA review of the report remain mandatory.

In the bill the possibility of voluntarily requesting the NCEA for advice is retained, even in the case of simple permits.

The NCEA's view

The NCEA had already advocated the EA system be modified back in 2001. We also advocate making a distinction between EA for simple projects and EA for complex projects, plans and programmes. For reasons to do with the technicalities of regulations, the government has made a different distinction between simple and complex projects than we advocated. Contrary to our preference, some relatively simple spatial planning decisions, such as on cinema complexes in urban areas, are now classified as complex projects. We have no problems with the thrust of the changes, however.

It is our opinion that the following elements are essential in order for EA to fulfil its function properly:

- contribution from stakeholders from the outset;
- independent quality assurance.

These two important elements in the current EA system remain a component of EA in the case of choices with major implications for the environment, in the case of complex projects and strategic plans. In our opinion this is appropriate, because these elements are essential in order to achieve the support necessary for intrusive projects and plans of this type.

Replacing formal civic participation at the beginning by a mandatory participation during the preparation for the EA, makes it possible for more intense involvement of the parties concerned and fits in well with the interactive process that EA should be.

In all EA procedures the scoping phase will be greatly simplified. In all evaluations, scoping is considered to be an important element in order to ensure that not only the sound information for the decision to be made is discussed, but also that not too much information is supplied. However, we would contend that the limited scope for alternatives in EA for permits granted by the obligatory application of BAT, plus the increased expertise in government regarding the description of environmental impacts justify drastically simplifying the scoping obligation for simple projects.

In the case of complex projects and strategic plans, the situation is different and scoping remains very important. It is precisely for these sorts of EA that the different alternatives must remain central. Many parties are affected by strategic decisions, so broad support is necessary in order to be able to actually implement the plans. Experience with SEA is not yet sufficiently widespread: this is an argument for the retention of independent advice.

Broad participation is provided for. The mandatory independent advice on scoping from NCEA is to be scrapped (it was scrapped for SEA in 2007), but the option of voluntarily requesting advice from the NCEA remains. In the past two years we have noticed a clear increase in the number of requests for voluntary scoping advice. This indicates that the parties involved see the NCEA's advice as added value.

To sum up, we approve the thrust of the bill proposed by the Dutch government. We see the reduction in NCEA's mandatory involvement and the increase in facultative advice from the NCEA as a challenge. In the coming months it will become clear whether Parliament also supports this thrust. We hope that a decision will be made soon and that it will be a good one, so that we can go to work in a new setting.

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 - (1) *The most recent research was in 2003: Novioconsult, Evaluatie m.e.r. 2003, kenmerk 2238/hk-hw commissioned by the Ministry of Housing, Spatial Planning and the Environment.*
 - (2) *The Netherlands: 400 inhabitants/km² versus e.g. India: 350 inhabitants/km² and US: 31 inhabitants/km².*

More information
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