



Twenty-five Years of EA in the Netherlands

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There is good reason to celebrate: over the past 25 years environmental assessment (EA) has found its place and demonstrated its value in the Netherlands. EA results in greater environmental awareness and more environmentally friendly decisions, as recent research shows. The focus has shifted in various ways, from environmental impact assessment (EIA) to strategic environmental assessment (SEA), from rigid procedural requirements to a more tailor-made approach, from a comprehensive approach to a selective one and from a sector-specific approach to an integrated one. The Environment and Planning Act is to be taken in hand over the next few years under the motto 'Simple and Better'. With EA strongly embedded in this new legislation, environmental information is sure to continue to figure prominently in Dutch plans and projects for another 25 years.

The Netherlands celebrated 25 years of EA in 2011. The Dutch legislation on EIA, based on the EU directive on the subject, entered into force in 1987, and it was in the same year that the Netherlands Commission for Environmental Assessment (NCEA) was given statutory status. Long before then, however, experience with environmental assessment had already been gained through pilot schemes and with a provisional commission. The first official advisory report by the provisional NCEA, on a new tunnel beneath the Nieuwe Waterweg in the Port of Rotterdam, dates back as far as 1982.

Now is a good time, with an official 25-year history and over 2,600 EA projects and plans behind us, to look back on the development of EA in the Netherlands and forward to the future. The study of 25 years of EA in the Netherlands concludes that EA has found its place and demonstrated its value, while suggesting areas for improvement. So we have good reason to celebrate – but there is still work to be done!

What follows is a brief overview of the NCEA's experience over the past 25 years and a glimpse into the near future.

Past and Present

The Dutch EIA system was fleshed out in the early 1980s. At the same time discussions were ongoing on the desirability and content of regulations at European level. The Netherlands deliberately decided to incorporate some elements in addition to those required by the EU directive, namely:

- Scoping, with broad civic participation and consultation of administrative bodies;
- The obligation to describe alternatives – including the most environmentally friendly alternative – plus their environmental impacts. Alternatives were thus made an essential component of EIA;
- A mandatory advisory report on Terms of Reference and a review of the EIA report by an independent advisory commission, the NCEA;
- EIA not only for projects but also for certain government plans, such as the National Structure Plan for the Electricity Supply and the allocation of residential and industrial areas.

In the 1990s EIA was used – and regarded – mainly as a way of identifying possible impacts scientifically. The information, often detailed, was required to be comprehensive and accurate. This resulted in the NCEA undertaking its review on the basis of extensive checklists. Whether all the information was actually relevant to the decision being taken was not the main issue. Consequently there were increasing calls for an EIA report to be more selective. Evaluations rightly called for more attention to be paid to scoping, and this was done. A number of provincial authorities introduced tailor-made EIA with a higher emphasis on scoping. Moreover, the NCEA started distinguishing in its advisory reports between information that was essential to the decision being taken and information that was 'good to know' or could be provided at a later stage.

Scoping was and still is important in EIA, but it is even more important in the case of SEA. Comprehensive, detailed information is simply not required at strategic level: indeed, at this level that kind of information often cannot be provided, nor is it appropriate to the decision being taken. Key figures and qualitative assessments based on expert judgement are much more appropriate here. The Netherlands gained experience with this at an early stage, as EIA was required for certain strategic plans right from the start. This experience came in very handy when implementing the EU directive on SEA in 2006: we got off to a flying start.

The universities of Groningen and Utrecht, commissioned by the Ministry of Infrastructure and Environment, carried out the study: *Naar een toekomstbestendig m.e.r. Lessen uit 25 jaar m.e.r. en een verkenning van kansen en bedreigingen voor de m.e.r. in de nabije toekomst* Towards future-proof EA: lessons from 25 years of EA and an exploration of opportunities and dangers for EA in the near future

“At the start of the planning process, not enough attention is paid to exploring possible solutions in a participatory process.”

For a more detailed explanation of the changes in the requirements for Public participation in EIA and SEA, see the NCEA article on Public participation in EIAs and SEAs: lessons learnt in the Netherlands and their application abroad

From the turn of the century there has been increasing criticism from politicians and administrators that environmental legislation has become too complex, that it imposes a heavy research burden and that it makes decision-making too slow and cumbersome. By 2000 the interests of the environment had been sufficiently internalized, it was argued. A powerful counter-argument was put forward in 2008 by a government-appointed think tank, which found that the cumbersome and sluggish decision-making is not due to the procedures and rules; the problem lies particularly at the start of the planning process, where not enough attention is paid to exploring a broad range of possible solutions in a participatory process.

Both these lines of argument gave rise to a desire to modernize EA, and intensive discussions on the position of EA and the role of the NCEA ensued. The debate finally crystallized in the Act to Modernise Environmental Assessment, which entered into force on 1 July 2010. The result is a stronger focus on SEA, fewer rigid procedural requirements and greater flexibility for the competent authorities to tailor the process, and more voluntary advisory reports by the NCEA. The NCEA has argued to safeguard the most important EA elements in strategic plans and complex projects: broad participation right from the start, research into alternatives and independent quality assurance. For the main characteristics of the present system, see p. 8/9.

The mandatory inclusion in EA of the most environmentally friendly alternative has been both applauded and vilified. Advocates, including the NCEA, have seen it as an effective way of forcing initiators to map out the best possible course in environmental terms, whereas opponents have seen it as red tape with no real value. Sadly, the most environmentally friendly alternative has been abandoned in the recent amendment to the law. What has remained, fortunately, is the obligation to set out alternatives that are attractive and realistic in environmental terms.

All evaluations that have been carried out have endorsed the value of the NCEA as an independent body that provides quality assurance. The current mandatory review of SEA and EIA for complex projects guarantees this role. Under the present system greater responsibility on the part of the competent authorities is combined with the option of voluntarily asking the NCEA for advice at the scoping stage and on EIA for simple projects. Extensive use is being made of this facility: for example, 40% of the NCEA's advisory reports in 2011 were commissioned voluntarily. Given the importance of proper scoping at the start of an EA process we will continue our efforts to have advice from the NCEA at an early stage more firmly embedded in the legislation.

The competent authorities can only fulfil their greater responsibilities if they have sufficient knowledge of both EA and environmental aspects, but this is in short supply, especially in the smaller municipalities. For them EA is a non-recurring event and they lack the capacity to develop expertise. The government has therefore empowered the NCEA to step up its role as a knowledge broker. We provide information to local authorities, proponents and NGOs in the form of descriptions of best practices, fact sheets, a digital newsletter and workshops on hot topics in EA.



The Future

Now, just under two years after the Act to Modernise Environmental Assessment came into force, there is a fresh debate on the position of EA. The present government has set itself the target of radically simplifying environmental law under the motto ‘Simple and Better’. The aim is to integrate a large number of sector-specific Acts, regulations and permits into a single new Act, including those on spatial planning, transport, water management and nature conservation. The legislation on EA is also to be incorporated in the new Act.

The idea is to reduce the number of mandatory planning elements to five, as follows:

1. An integrated spatial plan at central, provincial and local government level, setting out general policy and integrating sector-specific interests
2. Application of this general policy in generic statutory provisions (at central government level) and by-laws (at provincial and local government level)
3. Sector-specific programmes insofar as these are required by the EU
4. Permits for cases where departure from the generic statutory provisions is required
5. Project decisions for complex projects under government management, such as the development of the Port of Rotterdam and large land-based wind farms. These project decisions will have a major effect, as they will take the place of permits for individual activities.

In this scenario local land-use plans, for instance, could be dispensed with. There is debate as to which planning elements should be obligatory and which optional, and where a framework needs to be laid down in line with the EU directive. The outcome will determine the position of SEA in the new system.

The Ministry of Infrastructure and Environment wants SEA to be better integrated in planning. This is a step in the right direction, as it will provide more opportunity to use SEA as an aid to planning and less as retrospective justification. In this way it will counterbalance the increasing legalization of EA.

Challenge

The challenge for us in the coming years will be to make more use of the NCEA’s knowledge and experience in the SEA process – in other words not just to review but also to contribute ideas. The aim is to give competent authorities, initiators and stakeholders greater security and assurance that the various steps in the SEA process have been taken on the basis of good environmental information. This approach should produce better integration of SEA information in the planning process and a better basis for decisions along the way. We intend to apply this greater integration in a number of pilot advisory projects, and the results will also provide input to the debate on the new Environment and Planning Act.

Vision

Our standpoint in the debate is that it is important to make careful considerations that take the environment fully into account, in both SEA and EIA. In SEA because decisions are being made that have a decisive effect on the environment, for example on the utility and necessity of development, or on siting. SEA can help to prevent the need for discussion on the utility and necessity of projects and their location at a later stage, in the EIA. Strategic plans, however, will not be able to cover the planning issues relevant to the environment in all cases. Careful research will therefore still be needed into environmental impacts at project level, especially in the case of complex projects. Our position in the debate on the new Act therefore remains as follows: to assure its quality, a good EA regulation consists of proper scoping, participation, research into alternatives and input of independent knowledge during the process.

“The government has empowered the NCEA to step up its role as a knowledge broker.”

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Summary of the Dutch environmental assessment country profile

Legal framework

Framework/Enabling law

Environmental Management Act, 1987

National EA procedures

The Environmental Assessment (EA) procedure is established in Chapter 7 of the Dutch Environmental Management Act (EMA). The procedure is further specified in the EA decree and subsequent amendments. The existence, function and working method of an independent commission for environmental assessment (Netherlands Commission for Environmental Assessment - NCEA) is set out in Chapter 2 of the EMA.

Most recent update

The Environmental Assessment Modernisation Bill, 1 July 2010. The Dutch Environmental Assessment legislation has recently been revised.

- A simplified procedure for projects (EIA) with limited environmental repercussions.
- A full fledged procedure for complex projects (EIA), and for plans, programmes and policies (SEA)

Note that 'simplified' does not necessarily stand for 'easy', as minimum requirements are in place. The type of permitting procedure determines whether the *simplified* or the *full fledged* procedure applies to a project.

Exemptions from EA application

Projects and plans are exempt from EA requirement only in exceptional cases. For example in cases where public safety or public health are at issue if the activity is not urgently executed.

Integration of EA into decision-making

The EA procedure is connected to the permitting or approval procedure that must be followed for the plan or project in question. These requirements are set down in very diverse laws and regulations. This depends on the type of plan or project and the administrative body that is authorised for the preparation or adoption of these, i.e. the competent authority. Approval of the plans or projects follows this 'parent procedure' and the EA requirements are integrated into procedural steps as far as possible.

SEA tiering with EIA

The Dutch legislation specifically recognizes that different EAs may be needed for a series of subsequent decisions. The EMA has made a procedural allowance for situations where one initiative requires decisions at different levels, and therefore different EAs. In those cases combined impact assessment processes are possible. The EMA allows for:

- coordination of specific steps in the EIA/SEA procedure (such as where the public submits their written comments on the assessment, who makes public announcements on the EIA/SEA, etc.) and
- coordination of plan or project approval decision making, meaning coordination of separate decisions on environmental permitting and plan approval.

Institutional setting for EA

Central EA authority

Ministry of Infrastructure and Environment

Other (potential) parties involved in EA, and their roles

Five parties can be distinguished:

1. The competent authority responsible for the project approval or plan adoption decision
2. The proponent
3. The advisors and administrative bodies which, due to the regulatory requirements on which the plan or project concerned is based, must be involved in the preparation thereof, such as the environmental inspectorates and the heritage authorities.
4. The Netherlands Commission for Environmental Assessment (NCEA).
5. Citizens and other stakeholders.

(De)centralisation of EA mandates

The EA mandates are decentralised. Depending on the type of project, programme or plan and its EA requirement, it can be either the local municipality, the provincial authority or the central authority. The responsibility to ensure the EA requirements are met lies with the authority responsible for the project permitting or plan approval decision.

EA procedure

Screening

Screening requirement and authority

Screening is a required step in the EA regulation. The competent authority decides on the applicability of an EA in cooperation with relevant administrative bodies.

Screening process

To know if an EA is required, there are two lists, (C- and D-list) with specific activities and thresholds.

- Part C contains activities, plans and projects for which an EA is mandatory.
- Part D contains activities and projects for which a judgement whether EA is required is needed. This means that on a case-by-case basis a judgement must be obtained first on whether an EA is required or not. This judgement depends on the seriousness of the negative effects on the environment and the sensitivity of the affected environment.

Scoping

Scoping requirement

Scoping is a voluntary step in the *simplified* procedure and a mandatory step in the *full-fledged* procedure.

Scoping process

In the *simplified* procedure steps are as follows:

1. The proponent sends a written statement to the competent authority concerning the intention for an activity.
2. The proponent can then either:
 - a) request advice on scoping. The competent authority must provide an advisory report within six weeks. Or,
 - b) not request an advice on scoping. The competent authority may decide to issue an advice on scoping anyhow, but this is not mandatory.

If the competent authority chooses to give scoping advice it must consult government bodies and legal advisors on the content. An independent advisory report by the NCEA on scoping may be requested by the competent authority on a voluntary basis.



In the *full fledged* procedure, steps are as follows:

1. A notification of the proposed activity is published (notification of intent).
2. The proponent consults advisors and administrative bodies about the terms of reference for the EA report (scoping report);
3. The public may submit views on the proposed activity and on the terms of reference for the EA report.

Here too, an independent advisory report on the terms of reference by the NCEA may be requested by the competent authority on a voluntary basis.

Assessment and reporting

Assessment process

The EA report is carried out by or under the responsibility of the proponent.

Content of EA report

The regulation lists the following content requirements:

- Objective
- Proposed activity & alternatives
- Relevant plans & projects
- Current situation & autonomous development
- Effects
- Comparison
- Mitigating & compensating measures
- Gaps in information
- Summary

Review

Review process

In the *simplified* procedure: after the completion of the EIA report, the competent authority reviews whether the quality of the assessment is sufficient. The EIA report (together with the draft project) will be made available for public inspection. An independent quality review by the NCEA can be requested by the competent authority on a voluntary basis.

In the *full fledged* procedure: an independent quality review by the NCEA of the EIA/SEA report is mandatory. The NCEA evaluates the EA report and draws up an advisory report on the adequacy of the information provided. When necessary information is lacking, the NCEA makes recommendations for addressing this.

Decision making

Decision justification

The plan approval or project permitting decision must include an explanation of how account was taken of:

- The possible impacts on the environment described in the EA report
- The alternatives described in the EA report;
- The views by the public/stakeholders submitted with respect to the EA report;
- The advisory review issued by the NCEA (mandatory in full fledged procedure, voluntary for simplified procedure);
- Any major negative cross-border environmental impacts and the outcome of the consultations on this with the administrative bodies in the other country concerned.

Decision publication

The project permitting or plan approval decision is published in accordance with the requirements of the 'parent' procedure.

Monitoring

Monitoring requirement

After approval of a plan or project subject to the EA requirement, the competent authority concerned must investigate the actual environmental impacts during implementation. In case of non anticipated negative affects, relevant measures must be taken.

External monitoring

The competent authority and the environmental inspectorate are responsible for monitoring projects and plans and their impact on the environment. If the proponent is a private party, it is required to cooperate fully in providing information when requested.

Public participation

Public participation requirements

In the *simplified* procedure, public participation is only legally required after publication of the (draft) EIA report. The public can provide comments on the information in the report.

In the *full fledged* procedure there are two moments for the public to submit their views:

1. After the publication of the notification of intent/ terms of reference EA report (scoping)
2. After the completion of the EA report and before the project/plan in question has been decided on.

Access to information

With respect to the *simplified* procedure, the (draft) EIA report and the draft decision will be made available to the public.

With respect to the *full fledged* procedure, in addition to the above (EIA/SEA report), the notification of intent for the project or plan must also be published by the competent authority.

All documents are deposit for inspection at the office of the competent authority.

Legal recourse

Possibilities for appeal

The possibilities for appeal follow from the law of which the EA decision is part. It is not possible to appeal an EA decision alone. Only the decision on the planned activity can be appealed. However, if the EA procedure has not correctly or completely been followed, this decision can be annulled for that reason.

Who can appeal

The public, (organised) entities and administrative bodies affected by the project/plan.

Penalties

There are no direct financial penalties associated with appeal, but the project can be suspended.

EA practice

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Annual no. of EIAs / SEA's

There is no central EA database. However, the NCEA keeps a database with EIA's and SEA's where an advice by the NCEA was mandatory or voluntary requested.

Accreditation of consultants

There is no accreditation system of EA consultants in the Netherlands.

Professional bodies

Association of Environmental Professionals (VVM) www.vvm.nl

Toets Magazine, monthly magazine on EA practice and legislation. www.toets.nl