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Don't Shoot the Messenger – Reflections on streamlining and simplification of Environmental Assessment in the Netherlands

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ABSTRACT

The Netherlands' Environmental Assessment (EA) system has continuously been discussed with calls for streamlining and simplifying. This paper aims to provide an overview and to examine these discussions, including their more fundamental background. To this end, we discuss the origins of the Dutch EA-system, its practice, the critique, the regulator's reaction by changing institutional arrangements, and the consequences. We conclude that politically, EA is blamed for cumbersome planning and decision-making, while professionals are more nuanced. We see a process of persistent cumbersome planning and decision-making about plans and projects in a country in which environment and nature are under pressure. This situation is resulting in impromptu 'escape routes' and evermore detailed EA-studies that are costly, time-consuming, lack quality, are contested, and often fail before court. This process is observed for a long time. Although most studies stressed that streamlining and simplifying will not help in accelerating the planning process, nevertheless regulatory changes aimed at this because of political pressure. Overall, as a consequence of the simplification of regulations and the reduction of safeguards, the advanced and comprehensive nature of the original Dutch EIA-system has been called into question. EA as a messenger intrinsically will always be subject to critique.

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Environmental impact assessment; strategic environmental assessment; EA system evaluation; streamlining; simplification; The Netherlands

Introduction

During the 35 years that the Environmental Assessment is regulated in the Netherlands, continuously, the EA (Environmental Assessment) practice and system have been discussed and calls for streamlining and simplifying were made – as in many other countries (Bond et al. 2014). The aim of this paper is to provide an overview and to examine these discussions, as well as their more fundamental background in order to provide further insight into the mechanisms and consequences of streamlining and simplification. To this end, we discuss the origins of the Netherlands' EA-system, EA-practice, the criticism, regulator's reaction by changing institutional arrangements, and the consequences of these changes in the EA-system. We do this by providing an in-depth overview of the various developmental stages of the Dutch EA, and we conclude with a reflection. In this paper, we use the term Environmental Assessment (EA) to refer to both project-based Environmental Impact Assessment (EIA) and policy-, plan-, and program-based Strategic Environmental Assessment (SEA).

Origins of EIA in the Netherlands

Environmental Impact Assessment (EIA) has been formally regulated for over 35 years in the Netherlands (Arts 1998; Infomil 2022). Following the lead of the USA and Canada, the Dutch EIA-system was developed and experimented during the late 1970s and early-1980s. When the European EIA-Directive (85/337/EEC) was implemented, a link was sought with the more advanced Canadian system in addition to the fairly basic European regulations, and the Dutch EIA-regulations finally came into force since 1987. According to many authors – especially from abroad (Wathern 1990; UNECE, United Nations Economic Commission for Europe 1991; Glasson et al. 1994; Wood 1995; Sadler 1996; Sadler and Verheem 1996) – the Netherlands had an advanced system and process at that time, which comprised various extra safeguards such as explicit, formally regulated scoping; an Alternative Most Favourable to the Environment (AMFE); public consultation (twice, regarding the scoping stage and the final EIA-report); related to the latter, two rounds of independent review by the specifically created Netherlands Commission for Environmental Assessment, 'NCEA'; follow-up ('ex post evaluation'); as well as EIA at the strategic level for (spatial planning) programs and plans. Also, requirements were included to regularly evaluate the EIA-system – its institutional arrangements, regulations, and practices (see the evaluation reports by ECW, Evaluation Commission for the

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Environmental Management Act 1990, 1996; van Kessel et al. 2003).

In the first years, the most important critique was that the potential of the Dutch EIA-system was not fully used: EIA-reports were often too thick, containing redundant, irrelevant information or were lacking essential information (about alternatives, specific impacts and uncertainties), and their practical usefulness for designing, planning, and decision-making was not fully exploited (ECW, Evaluation Commission for the Environmental Management Act 1990). Despite its unpopularity – that was mainly due to the negative image of EIA – however, these evaluations also concluded that EIA was important for taking into account environmental values in planning and decision-making (ten Heuvelhof and Nauta 1996, 1997; Leroy 1996; Arts 1998). Regarding this, apart from the EIA-requirement itself, especially the extra safeguards of the Dutch EIA (as mentioned before) proved to be important.

Practical experience not only in Europe but also elsewhere raised attention to the issue of 'foreclosure' – choices important to the environment (about, for instance, 'what' and 'where') were sometimes already made before a project's EIA-procedure started (see e.g. Wood 1995; Sadler and Verheem 1996; Fischer 2002; Arts et al. 2011). This discussion led to the development of Strategic Environmental Assessment (SEA), which was codified at the European level by the SEA-Directive in 2001 (2001/42/EC). Finally, in 2006, the Dutch requirements for strategic-level EIA for plans and programs were amended in order to comply with the SEA-Directive (2001/42/EC).

Growing critique on EA

During this same period, discussion arose about the extent of rules and procedures in environmental and spatial planning (van Kessel et al. 2003). The introduction of the European SEA-Directive (2001) was seen as a new European obligation that would 'inevitably' entail an increase in regulatory pressure. The extra European attention to the environment in plan development, therefore, had to be compensated by the removal of Dutch requirements that exceeded the European minimum. Revision of the EIA-procedure should contribute to alleviating EA's overall administrative burden. In 2003, the government expressed its wish to modernize environmental legislation (Balkenende et al. 2003). The principles underlying the new EA-system were – in line with the dominant New Public Management paradigm – deregulation, decentralization, and the strictest possible implementation of European regulations. Requirements for the new system were simplicity, transparency, clarity, consistency and feasibility, and as-short-as-possible procedures. More room had to be made for own interpretation by and responsibility of (decentral) authorities (Dutch Parliament 2005).

Political discussions about EA intensified in the mid-2010s, as many infrastructure projects were halted by court – because of the fundamental issue of (too) limited environmental space for (too many) new development projects in a small, densely populated country with already high environmental pressure. Complex (environmental) regulations were often blamed for this cumbersome planning and decision-making (Tolsma and de Graaf 2016). More specifically, EA was often seen as a source of delay: involving detailed calculations, which cost much time and effort result in juridical nit-picking (Arts 2010). Mottee et al. (2020), however, argued that also without EA, projects may encounter serious delays and cost-overruns just because of the complexity of the planning situation at hand. Accordingly, the independent Committee for 'faster decision-making of infrastructure projects' (Committee Elverding 2008) concluded that the issue of cumbersome planning and decision-making is much more complex and multifaceted (which can be also seen elsewhere: Arts 2007; Faith-Ell and Fischer 2021). The Committee's analysis was that main causes for delays relate not only to EA and project preparation but also to political culture (risk avoidance, lack of political consistency, and limited public acceptance), issues typical of the (Dutch) decision-making process (insufficient budgets, unrealistic timelines, and lack of comprehensive exploration of problems), and legal issues (fragmented and complex procedures). As a consequence, 'much time is spent on producing detailed forecasts with many assumptions that involve wide margins of uncertainty' (Committee Elverding 2008, p. 5; Arts 2010; de Vries et al. 2013, 2016). If contesting parties challenge such detailed assessments and find failures, they may win before the courts. And afterwards, proponents and authorities often react with even more detailed assessments of impacts (Arts 2007, 2010). As a result, EAs were often seen or framed as contributing to (legal) risks rather than as mechanisms that manage environmental risks (Arts and Niekerk 2010). As EA provides insight into the extent to which both environmental goals and project development objectives can (or cannot) be met, EA often provides for an unwelcome message to proponents and authorities.

Streamlining EA-regulations

In 2010, after a long period of preparation and discussions about 'modernization of EIA', the EA-regulations in the Netherlands radically changed. The focus was on limiting the costs associated with the procedure and on limiting requirements that went beyond EU-standards. Therefore, various safeguards – which were considered important by international scholars

(e.g. Wood 1995; Sadler 1996; Fischer 2002) and by evaluations of the Dutch EA-system (ECW, 1990, 1996; ten Heuvelhof and Nauta 1996, 1997; van Kessel et al. 2003) – were abolished (see Runhaar et al. 2011, 2013; Arts et al. 2012; de Vries et al. 2013, 2016):

- No requirement for the proponent to prepare a notification of intent ('startnotitie');
- The notification of intent is not made public, and no opinions can be submitted on the notification of intent;
- The competent authority no longer sets guidelines for the content of the EIA-report;
- No requirement to include an AMFE-alternative in the EIA;
- The EIA no longer needs to be explicitly accepted by the competent authority;
- No need for review by the independent NCEA (Netherlands Commission for Environmental Assessment).

The idea was that more tailor-made procedures were introduced, resulting in a distinction between procedures for more simple projects (with the above-mentioned simplifications) and for plans and complex projects (with most safeguards remaining in place, such as the review by NCEA). The argument was that by this, (decentral) authorities enjoy more freedom (and responsibility) to gear the process to the specific initiative and context at hand, and they have more flexibility in public participation (for tailor-maid involvement) (Runhaar et al. 2011; Arts et al. 2012).

The evaluation of the EA-system, conducted just after the enactment of the new 2010 EA-regulations, showed that the changes were contested among practitioners (Runhaar et al. 2011, p. 81). This study also indicated that most practitioners did not expect the new regulations successfully achieving their objectives. Practitioners did not experience more transparency; neither they expected the new regulations to result in faster decision-making nor a diminished administrative burden. However, practitioners had some hope at more environmental awareness of proponents and authorities (Runhaar et al. 2011, p. 10).

The period after the 'modernization of EIA'

After the 'modernization of EIA' was initiated in the period 2003–2005, the financial crisis in 2007–2008 further intensified the discussions about EA-system and practice in the Netherlands. As a result of the crisis, fewer project investments were done by private and public parties. In order to stimulate investments, initiatives were taken to speed up and simplify spatial planning procedures for projects. The 'temporary' Crisis and Recovery Act (Chw, 'Crisis- en herstelwet', enforced in 2010) aimed to simplify and speed up procedures for projects and thereby giving an economic boost to the construction sector during the financial crisis. The law contained a large number of amendments to various planning and environmental regulations to shorten procedures, reduce the number of permits required, and create more clarity on administrative responsibilities, while European and international regulations remain in full force. At the introduction, a total of 58 projects were designated to which the law applied. Temporary measures applied to these projects, including measures restricting appeal procedures and simplifying EIAs. Although the law was initially intended to be a temporary measure, it became permanent in 2013. An evaluation of the Chw showed, however, that there was limited acceleration of procedures; the speed of legal procedures proved to be of limited relevance to the speed of actually realizing projects. There also proved to be no clear relationship between a quick ruling by the administrative court and a quick start of a project.

In 2010, the new Cabinet Rutte-I announced the ambitious Environment & Planning Act ('Omgevingswet'), by which the government wanted to further simplify and merge the rules for spatial development and environmental protection (Rutte 2010). This new Law would comprise 40 Acts and even more General Administrative Orders and Regulations regarding planning and decision-making about land use, infrastructure, water, environment, nature, cultural heritage, as well as EA (Oldenziel and de Vos 2018; Government of the Netherlands 2022). One of the aims of The Cabinet Rutte-I aimed with the new Law to reduce regulations and the burden of conducting studies, while, at the same time, decisions on projects and activities could be made better and faster, and more room for private initiatives would be allowed. This ambition is quite similar to the Crisis and Recovery Act (but with a broader scope and field of application), which the new Law will also replace (Government of the Netherlands 2022). The legal development process of the Environment & Planning Act is very ambitious and proves to be rather complex (Oldenziel and de Vos 2018) – its enforcement has been postponed five times! The latest projection is that the Law should come into effect on 1 July 2024. The stated core principles of the Environment & Planning Act include integrated consideration of both environmental protection and spatial development; more responsibility for (decentral) authorities in practice ('trust'); better public participation from the start; and better gearing the legal system to the EU-regulatory framework and less restrictive regulations. However, various academic studies indicated that little is to be gained from amending legislation and regulations and acceleration (see e.g. Marseille 2022).

Ongoing attempts of streamlining and simplification

The latest changes regarding SEA, as proposed in the Environment & Planning Act, are as follows: an open screening process, but no requirement anymore for a notification of intent. For EIA, a major change is that no distinction is made anymore between simple-, Chw- or complex projects. Since 2010, the latter had an EA-procedure with more safeguards (or better stated, with the original safeguards of the first EIA-regulations). Under the new Law, this will be 'streamlined' and all projects are treated the same, as if they are a simple project ('simplification'). This implies a serious reduction of the (original) safeguards, including: involvement of the NCEA is not mandatory anymore but optional, as is the scoping advice, and no notification of intent is needed. Because of the many infringements of EU-Law observed by the European Commission, much attention is given to screening of EA application. Screening becomes a more open process (instead of the previously more closed process with a list of predefined activities and thresholds subject to EIA and SEA). In essence, all of this implies a further reduction of formal safeguards in the EA-process (especially for project-related EIA), while public participation – that is strongly emphasized in the argumentation for the need for the new Law – is not further enhanced. All in all, much is left to the judgment of individual (decentral) authorities, and therefore safeguards might become vulnerable to (local) politics. Furthermore, in the end, decisions about plans and projects might well be halted because a specific interpretation of an authority (despite their good will, or not) for tailoring the EA-process to the activity and decision at hand might not stand before court.

Evaluating current practice

Ten years after the 2010 EA-regulations were enforced, an evaluation of overall Dutch EA-practice was done (Arcadis 2020). This study stressed the important role of the NCEA, which provides independent advice on the quality of the process and content of impact assessments, both at project level (environmental and social impact assessment) and strategic level (strategic environmental assessment). The Arcadis (2020) study concluded that if the NCEA is involved in an EA-procedure (which is not always the case anymore), in 70% of the cases, the Commission's review observes deficiencies in quality (so only 30% of the EA-reports are considered to be of sufficient quality). After supplementing the EA-report, the majority of the reports are reviewed to have sufficient quality (>60% of those with previously insufficient quality). It remained unclear what the quality is of the many 'simple' EAs done for which no NCEA review is done (Arcadis 2020). Whether this study's finding that 70% deficiencies in quality are acceptable was debated in the EA-field: some argued that it is logical in an EA-process that improvements are needed, especially as it regards complex plans and projects, other practitioners did not. However, it can be concluded that such practice:

- Costs much extra money, time, and effort of those involved (proponents, authorities, and other stakeholders);
- Signals the generic tension between development proposals and protection of nature and environment which are under pressure (see discussion before);
- Shows that quality control in the EA-process is vital. In the study, institutional arrangements such as certification of EA-practitioners/consultancy firms, as well as centrally organized EA-registration and databases, were discussed. However, these suggestions have not (yet) been implemented; and
- Indicates that there is room for improvement earlier in the EA and planning process for better scoping and addressing issues (N.B.: as discussed before, the earlier stages were especially streamlined and simplified by the various changes of the EA-system in the past).

In line with all earlier evaluations of the EA-system, also, the 2020 evaluation study concluded that there is broad consensus that the NCEA is of important added value for EA (Arcadis 2020). This regards the expertise, independence, and transparency the NCEA provides, as well as its advisory services and capacity development.

A serious issue that hampers a clear view on the current EA-practice in the Netherlands is that no organization anymore keeps a database of the SEAs and EIAs conducted in practice. There is no overview of overall Dutch EA-practice since 2010, when the NCEA was not anymore 'involved-by-default' in EA-procedures. As a consequence, not only this pillar of good EA-practice has become vulnerable (Berenschot 2012, 2017) but also there is no clear overview anymore of EA-practice in the Netherlands (Arcadis 2020), hampering future monitoring and evaluation of the EA-system and therefore learning and reflection.

Conclusion and reflection

On the basis of our in-depth analysis of the historical development of the Dutch EA system and practice, we conclude that: (1) EA is politically EA blamed for cumbersome planning and decision-making, while professionals are more nuanced; (2) we see a process of persistent cumbersome planning and decision-making about plans and projects in a country in

which environment and nature are under pressure; (3) this situation is resulting in impromptu 'escape routes' and evermore-detailed EA-studies that are costly, time-consuming, lack quality, are contested, and often fail before court; 4) although most studies stressed that streamlining and simplifying will not help in accelerating the planning process, nevertheless regulatory changes aimed at this because of political pressure; 5) as a consequence of the simplification of regulations and the reduction of safeguards, the advanced and comprehensive nature of the original Dutch EIA-system has been called into question. Finally, EA as messenger intrinsically will always be subject to critique.

In general, there seems to be a difference between political and professional perceptions. Politically, EA is blamed for cumbersome planning and decision-making, while professionals who are actually regularly involved in EAs (both proponents, authorities, and third parties) have a much more nuanced perception. Runhaar et al. (2011, p. 23) concluded that EA in the Netherlands is considered by professionals as a legal requirement, which is reasonably effective as a 'corrective' governance instrument but not as a decision support tool or design instrument. The mandatory status of EA as well as transparency contribute to EA effectiveness (see also Arts et al. 2012).

Overall, we see a process of: persistent cumbersome planning and decision-making about development plans and projects and the creation of impromptu 'escape routes' (called 'goat-trails' in Dutch) and evermore-detailed proposals and EA studies, which are costly, time-consuming, lack quality, are heavily contested among societal stakeholders, and often fail before court ('juridification'). Our historical analysis of the Dutch EA system and practice shows that this process is observed already for a long time in the Netherlands (Committee Elverding 2008; Arts 2010; Verschuuren 2010; Runhaar et al. 2011; de Vries et al. 2013, 2016; Marseille 2014, 2022). Although most studies and scholars stressed that streamlining and simplifying will not help, nevertheless regulatory changes had frequently these objectives because of political pressure. Moreover, Runhaar et al. (2011, p. 86) reported already that high dynamics of (environmental) regulations were considered by practitioners as a threat in itself to EA-effectiveness (see also Arts 2010). As a consequence of the simplification of regulations and reduction of safeguards, the advanced and comprehensive nature of the original Dutch EIA-system (of the 1980s-1990s) has been called into question, not only in the Netherlands but also abroad (Fischer 2005). A similar process of streamlining has been observed in various other countries as was already pointed out by Bond et al. (2014).

After 35 years, EA has become a 'part of life' and is viewed as a routine element in decision-making for appraising environmental aspects (Arts et al. 2012, p. 33). Despite the various streamlining and simplification changes, EA is mandatory and functions (still) as an instrument for including environmental considerations in decision-making about plans and projects, but it does not make decisions on these initiatives easier. The price is that EA has gained a reputation for contributing to cumbersome planning and decision-making. However, as Arts et al. (2012) already argued, the ongoing resistance EA meets in practice can also be considered a sign that EA is actually working as an instrument for environmental governance. EA provides insight into the extent to which both environmental goals and project development objectives can (or cannot) be met – which is especially relevant in a densely populated country with already high pressure on environment and nature. As a consequence, EA often provides for an important but unwelcome message to proponents and authorities. Still, the conclusion should be 'don't shoot the messenger'.

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