The Influence of Environmental Quality Standards and Safety Standards on Spatial Planning

Water and air as examples

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I. Introduction

Over the last few years, European water policy has been faced with a considerable amount of changes and innovations. Important causes of this are in the first place changing natural circumstances, such as for instance climate change. Secondly, the policy perspective has changed: the concept of 'integrated water system management' has been introduced. This means that water policy, more so than was the case before, is geared towards all aspects of the water system in their mutual connection: surface water, groundwater, banks, flora and fauna, dams and the technical infrastructure. The ecology is beginning to play an ever more significant role. For this reason, water quality and water quantity are also more often considered as mutually connected concepts. Thirdly, policy-making structures have become more complex. With the introduction of the concept of 'integrated water system management' the interdependencies between the policy sectors of environmental management or water management and spatial planning have come more prominently to the fore. The European Water Framework Directive1 – dealing with the European handling of especially the issue of water quality – has added an international dimension to the originally national approach.

The changes in European water policy also have implications for water policy and water law at national level. This concerns the implementation of the Water Framework Directive2 and in time also the Flood Risk Management Directive.3 These Directives give rise to various issues in connection with the national implementation. An important question is what role the environmental quality and safety standards as required by the Water Framework Directive and the Flood Risk Management Directive should play in other policy areas, amongst others, in the field of spatial planning. In the field of water management there is usually also legislation at the level of the Member States which has not resulted from European directives. This is certainly the case for the low-lying delta country of the Netherlands.4 The Water Framework Directive has opted for a territorial approach based on river basins. By opting for an ecological approach resulting in ecological quality objectives it may be expected that water management will increasingly influence spatial planning in the Member States. The question thereby arises to what extent the quality standards that are part of the mandatory 'good status' under the Water Framework Directive should be given effect in the decision making in the field of spatial

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2 Id.


planning in the Member States so as to be able to eventually, in 2015, fulfil the obligations under the Directive. Over the next few years, this issue will be tabled in more Member States. At present, the relationship between water management and spatial planning plays an important role in the discussion in the Netherlands. This is partly caused by how the Netherlands has transposed the quality standards as regards air into national law. The manner of transposal that was chosen in the Netherlands has had the effect of causing considerable delay to many building projects and the laying of roads or caused plans for this to be changed or halted. Presently, there is a fear that the water quality standards from the Water Framework Directive will have the same stagnating effect on economic development.

The same questions that arise over water quality standards will also – albeit it less so – play a role in water safety policy, especially in flood risk management. At this moment, a directive on flood risk management is being prepared. In the protection against floods and flooding standards will also play an important part. One difference is that these standards are not established at European level. The standards for safety and flooding are established by the Member States themselves based on their national legislation and suited to the situation of each separate Member State. Nevertheless, these standards too will have a major impact on spatial planning.

In this contribution, we will outline the possibilities under Dutch law for allowing environmental quality requirements and safety standards against floods and flooding influence the decision making in the framework of spatial planning. Our starting point will be new legislation that is currently being prepared for water management and spatial planning. In some places, attention will be paid to the way in which this is done in other Member States. The research is not, however, of a comparative law nature. After this introduction, the requirements following from the Water Framework Directive are briefly outlined (section II) and the way in which the Directive is transposed into Dutch law (section III). Subsequently, a more general outline is given of the ways in which quality requirements can impact on other policy areas (section IV). In section IV, the manner of impacting is described as it is provided for under the new water legislation, while section IV.2. discusses the manner of impacting under current law. In section V, the possibilities that exist for letting quality requirements have an effect on spatial planning are further examined, whereby attention is first paid to the planning and legal framework (section V.1.). In section V.2., it is described how Dutch air quality standards impact on spatial planning. Section V.3. gives a general picture of how quality requirements and safety standards against floods and flooding can have an effect on spatial planning. This is further elaborated in section V.4. for the water quality standards and in section V.5. for the water quantity standards. This contribution does not contain a separate section on the Flood Risk Management Directive. Section VI, provides the conclusion to the search for the optimal impact of quality standards and safety standards on spatial planning. Section VII. contains some concluding remarks.

5 In this context a study has been carried out which was commissioned by the national Environment and Nature Planning bureau into the external integration between water management and spatial planning: van Rijwiik/Driessen/Backes/Dieperink/ de Groot/Gewelltje, Juridisch-bestuurlijke capaciteit in het waterbeleid, enkele toekomstchekjes voor de extreem integratie van water en ruimtelijke ordening, Centre for Environmental Law and Policy/NILS, Utrecht, 2005. The outcome of this research has been used in this article.


7 Directive on the assessment and management of floods COM(2006) 15, See Beerer, Der Vorschlag für eine EG-Hochwasserrichtlinie – eine kritische Würdigung, EurUP 2006, pp. 170-177; Koffer, Beitrag zur Diskussion um den Entwurf einer europäischen Hochwasserschutzrichtlinie – aus technischer Sicht, EurUP 2006, pp. 178-183 and see also: Joint Approach for Managing Flooding (JAF), which was a 5-year project in cooperation with German, English and Dutch organization to find innovative measures to temporarily store water in the case of heavy rainfall in the area where the precipitation occurred in the framework of the Intereg III-programme (a programme of the European Commission with the aim of promotion die exchange of knowledge and area-oriented cooperation between various parties in different countries).