



Netherlands Commission for
Environmental Assessment

Tools for making judicial review effective

Dutch experience with NCEA and STAB

Gijs Hoevenaars

Technical expertise



Two Dutch institutions that provide technical expertise

- **Before decision-making:**
 - Netherlands Commission for Environmental Assessment (NCEA)
- **During court case:**
 - Foundation of Independent Court Experts in Environmental and Planning Law (STAB)



Netherlands Commission for Environmental Assessment (NCEA)

Task

- NCEA advises competent authority on
 - Scoping
 - EIA
 - SEA
- Competent authority is obliged to motivate how advice has been taken into account in decision-making



Some facts

- 30-35 Employees (ca. 15 “advisers”)
- Budget ca. 3.3 million €/year
- Paid per advice by competent authority
- Ca. 160 assessments/year
- Process time ca. 6 weeks



Origin



- Established in 1987
- In 2010: shift from mostly EIA to SEA
- In 2014: shift from funding by three ministries to being paid per advice (profit principle)



Legal requirement EU Law?

EIA (revised directive)

- Art. 5(3)b: The competent authority shall ensure that it has (access to) “sufficient expertise to examine” the EIA
- Implementation: possibility to ask advice of NCEA. In practice however: costs!

SEA

- Art. 12(2): “Member States shall ensure that environmental reports are of a sufficient quality...”
- Implementation: Review advice by NCEA obligatory



How does it work?

- Secretariat model
- Working group, consists of:
 - President
 - Technical secretary
 - 2 to 10 experts
- Database of 350 experts
- Site visit
- Review: check on completeness and correctness



Independent

- Experts have no involvement in the project in terms of:
 - employer,
 - colleagues,
 - private connection (e.g. partner),
 - city of residence,
 - additional jobs
- Do not advise developer or affected parties



Transparent

- On the basis of public information
- Website discloses which projects are under review
- Each advice is published on its website
- Press release



NCEA in court cases (1)

Judges tends to follow NCEA advice,
because of its:

- authority
- expertise
- consistency



NCEA in court cases (2)

- Quality of the report in general
- Scope and quality of the study of alternatives
- Quality of the description of impacts (maximum impact)
- Scientific knowledge and research methods
- Actuality of the information
- Effectiveness of mitigation measures



Foundation of Independent Court Experts in Environmental and Planning Law (STAB)

Task

Provide the **administrative courts** with advice on the **facts** and **technical aspects** of court cases

Actual: only **environmental and planning law** court cases



Some facts

- 40-50 Employees (ca. 37 “advisers”)
- Budget ca. 5.5 million €/year
- Financed by the government (Department of Infrastructure and Environment)
- Ca. 200 assessments/year (500 in 2007)
- Process time ca. 3 months



Origin



- Appeal to the Crown until 1985
- Permanent sections on advising in planning law and environmental law cases within the Department of Planning and Environmental Law

Main functions

- Providing impartial technical knowledge
- Structuring facts in complex cases
- “Eyes and Ears of the Judge”
- “Knowledge Broker”



Clients and mandate (1)

(Judicial Division of) **Council of State, 65%:**

- “report on all relevant facts and technical aspects of the case”
- Commissioned in an early phase of the proceedings
- No discussion with parties on mandate
- No comments by parties on the draft report



Clients and mandate (2)

Other (mainly **district courts**), 35%:

- Specified questions on certain technical aspects
- After “pretrial” (early) or after oral hearings (late)
- Parties participate in mandate (partly, district court Den Bosch)
- Parties can comment on draft report



Added value

- Impartiality assured
- Impartiality admitted
- Time saving finding an expert
- STAB can bridge technical knowledge and demands of proceedings
- STAB knows legal framework of technical questions



Thanks for your attention!

Questions?

