

The Implementation of the Water Framework Directive in Dutch Law: a Slow but Steady Improvement

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I. Introduction

In this paper I intend to describe the implementation of the Water Framework Directive in the Netherlands. I could be very brief on the subject. The Lower House recently (June 2004) approved a two-Section Bill which transposes the entire Water Framework Directive, including all its Annexes, into Dutch law¹. And yet, despite this Bill containing, as it does, just those two Sections, the European Commission is threatening to initiate infringement proceedings against the Netherlands before the European Court of Justice.

So, really, I should have been able to describe the implementation in no more than one or two pages. But this is, of course, nonsense, because the first question which now springs to mind – and which you would no doubt like to see answered – is perhaps how is this possible and why have other countries – Flanders, for instance – enacted entirely new water legislation².

A second thought – but only a thought, mind you! – is that those Dutch probably think – again – that they already have their affairs in order and therefore probably believe that they have been managing water in accordance with the principles of the Water Framework Directive for years and that it is the other Member States who could best learn from them. I have to admit that for years this has been the Dutch position on the implementation of environmental and water directives.

Honesty compels me to say that it has taken a long time, but now we are beginning to learn, as we have been forced to face the facts. The European Court of Justice is delivering one judgment after the other against the Netherlands and it is cold comfort that we are not the only ones.

II. Dutch water legislation in force

This brings me to the actual topic of this paper, the implementation of the Water Framework Directive.

As I have said, for now, implementation in the Netherlands takes place under existing legislation by means of some very minor amendments. An important reason for this is not that the Netherlands considers that it already has all its affairs in order. We, too, can tell that the Directive is asking a lot of the Member States and thus also of us. In addition, there is still a lack of clarity on numerous points. No, the main reason is that we wanted to be on time with the first necessary amendments to the legislation, which, after all, had to take place before December 2003. That was a legitimate reason. Nevertheless, the Netherlands has been and still is, inexcusably late in implementing the Directive.

The government has stressed that it expects that in time more legislation will be needed and as regards this, I will describe the plans for a Dutch Integrated Water Act at the end of this paper.

For now, however, in order to be able to understand the current state of implementation, we must first briefly examine the Dutch water legislation that is in force today.

1. Dutch water legislation takes a sector approach

The Dutch water legislation takes a sector approach. The main reason for this is that in the previous century new legislation was enacted whenever a water problem occurred. We thus have the Pollution of Surface Waters Act, which concerns the protection of water quality, the Groundwater Act, which regulates the distribution of scarce groundwater resources, while the quality of groundwater falls under the Soil Protection Act, which is a true environ-

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1 TK 2002-2003, 28 808, Nos. 1-3; EK 2003-2004, 28 808 A.

2 Decreet van 18 juli 2003 betreffende het integraal waterbeleid.

mental law. Sewerage management falls within the scope of the Environmental Management Act, as do most discharges into the sewerage system and water quality requirements are also generally regulated under this Act. Unlike other Member States, the authorisation to discharge is not regulated in environmental legislation, but in a true water Act - the Pollution of Surface Waters Act.

In the mid 1980s, legislation was initiated which would have eventually led to an Integrated Water Act. However, things never reached that stage.

The Act concerned was the Water Management Act, which was intended to introduce the initial means for integrated water management in accordance with the water system approach, though in essence, these means only consisted of an integrated planning system. Water management plans are established at the national, provincial and water board level and they comprise the strategic Government Note on water management, management plans for national waters (the larger waters), provincial water management plans and water board management plans for regional waters.

2. "Integrated" has a double meaning

In the first place, "integrated" refers to the internal integration within water management. It means that these plans concern both the quality and the quantity of groundwater and surface water. Harmonisation has been achieved by means of

- consultation between the different competent authorities in the formation of those plans, together with;
- the approval of local authorities' plans by central authorities;
- the obligation on authorities, in their decision making, to take account of their own policy plans;
- the requirement to consider higher-level plans in the establishment of lower-level plans.

In the second place, there is a mechanism that ensures external integration between water and related policy areas. This is known as the 'leapfrog arrangement', which applies to plans that are made in the field of water, the environment, spatial planning and traffic and transport and - after the Dutch nature conservation legislation was finally reviewed

in order to properly implement the Habitats Directive - nature conservation plans³.

This leapfrog arrangement is important to bear in mind, as it, together with the water management plans, will be one of the major instruments for the implementation of the Framework Directive.

There are two aspects to the leapfrog arrangement

1. When a new plan is established in one of the areas mentioned above (water, the environment, spatial planning, traffic and transport or nature) - let us take, as an example, the regional plan drawn up by the provincial authorities in the field of spatial planning - the plan should, on the one hand, look back and indicate the extent to which choices made in other policy areas are taken into account. So if it was decided in a previously established water management plan to create more room for water, for example in connection with river expansion or designating areas for emergency overflow or storage (flood relief), the zoning plan must indicate how these policy intentions as regards space for water have been incorporated.
2. On the other hand, when drawing up the new plan it has to be indicated what its consequences will be for the other policy areas. For example, it is conceivable that opting for more space for water not only affects water policy and spatial planning policy, but also, for instance, nature policy, given that the areas in question would (likely) be ideally suited for the development of new nature reserves.

The final piece of this Dutch mechanism for external integration is that every authority when making individual decisions must take its own policy plans into account. And precisely because these policy plans have played leapfrog with the plans in other policy areas, the Dutch authorities assume that the choices that were made in one policy area (for example water policy) will have the necessary effect on the decision making in other policy areas (environment, spatial planning, nature conservation, agriculture et cetera).

By now, you may be slightly baffled and possibly unable to understand how such a complex system, one that depends on so many expert and favourably disposed authorities, can function properly and in a way that does justice to the strict requirements imposed by the European rules, especially the Water Framework Directive.

³ See also Van Buuren, in: Schröder, *Jahrbuch des Umwelt- und Technikrechts*, 1992, pp. 216-218.

Such bafflement is nothing to be ashamed of. As it turns out, the various Dutch authorities have not been able to make this system function properly and it has now been realised that it is not only impossible for the general population, but also for the various authorities themselves, to get a proper grasp of the most recent policy in a given policy area and act accordingly and efficiently. For this reason, proposals are currently being tabled for a review of the planning system, where, for example, one possible choice would be integrated provincial zoning and environment plans. But for the time being, the above is the statutory system in force and it will just have to make do.

III. Implementation of the Water Framework Directive

Indeed, whilst the objective of the Directive does largely correspond with Dutch water management, i.e. an integrated approach to entire water systems, the Directive's method is to opt for the integrated management of individual river basins. In both the Dutch and European water management, "integrated" is understood to include both an internal integrated approach within water management -surface water and groundwater, quality and quantity – and an external aspect of integration with other policy areas like the environment, spatial planning, product policy, agriculture and nature.

1. River basins

The Netherlands is divided into four river basin areas, the Eems, Rhine, Meuse and the Schelde basins. The basins have been designated on the basis of the Water Management Act.

2. Competent authority

The Minister of Transport, Public Works and Water Management has been named as the competent authority in charge of coordinating river basin management plans for the different basins as well as having the responsibility for submitting information and reports to the European Commission. More generally, it has been decided not to

change anything with respect to existing powers in the field of water management which means that the central authorities, provinces, water boards and municipalities will all have certain duties in the implementation of the Framework Directive. Given that the division into basins does not correspond with the existing Netherlands' administrative districts, one has to conclude that intensive consultation will be needed between the various authorities.

3. River basin management plans

The river basin management plans for the four river basins will be documents of a summarising nature, which will also be a compilation of all required information. The Dutch river basin management plans will be included in the national Water Management Note based on the Water Management Act, which I mentioned above. This Act aims to ensure good water management in the broadest sense of the word – after implementation, the Act will also aim to ensure that the good status of Dutch waters will be taken care of. This 'good status', which consists of ecological and chemical components, will be defined in the water quality objectives that are to be included in the Environmental Management Act.

The programmes of measures will have to be reflected in the different plans as they are made by the various authorities in various policy areas. The period for which the plans will be valid has been extended from 4 to 6 years.

4. Designation of artificial or heavily modified water bodies

Artificial or heavily modified water bodies are not designated in the Water Management Note, but are designated in the management plans at the central level or at the level of the water boards, or in the provincial water management plan, depending on which is the most appropriate level.

Here, one should note that it is intended to include nearly all Dutch waters in this category, even the Netherlands' largest nature reserve and wetland, the Waddensea and it is understandable that these plans are both strongly advocated and opposed.

5. Programme of measures

The Framework Directive provides for compulsory basic measures and supplementary measures by which its objectives are to be achieved. These are widely different (emission and immission) measures (authorisations, general rules, environmental quality requirements, etc.). These measures are for the most part already in place in Dutch legislation, but are found in a variety of different Acts, such as the Water Management Act, which contains rules concerning the abstraction and impoundment of water, the Pollution of Surface Waters Act which deals with the protection of surface water quality, the Groundwater Act which regulates the abstraction and infiltration of groundwater, and the Environmental Management Act which governs water and environmental quality requirements. Certain measures may best be taken at national level, while for others the decentralised levels may be more appropriate. As I have already mentioned, the measures must be included in the plan (and at the level of government) that is the most appropriate.

As the first programme does not have to be completed until 2009, and the measures it contains only need to be operational in 2010, the statutory instruments (amendments of the law, implementing measures and bye-laws) which may be needed to give effect to all the measures in the programme have, in practice, not yet been taken into consideration in the framework of this implementation proposal. Besides, the Government is of the opinion that it will not be necessary to implement all measures in the form of regulations or bye-laws.

In their application of existing instruments like authorisations and reference decisions, the administrative bodies establishing the plans must take both their own plans and the plans in other policy areas⁴ into consideration, which, in principle, will also result in the implementation of some obligations under the Water Framework Directive.

⁴ See, e.g., Section 1(6) of the Pollution of Surface Waters Act, Sections 16(1) and 24(4) of the Water Management Act and Section 14(3) of the Groundwater Act.

⁵ ECJ, Judgment of 02.10.2000 in Case C-322/00 - Commission v The Netherlands.

⁶ ECJ, Judgment of 13.02.2003 in Case Commission v Luxembourg, AB 2003, No. 335, annotated by Backes.

6. Lessons learned from the implementation of the Nitrates Directive

It is in this context that I would like to refer to the ruling by the European Court of Justice against the Netherlands of 2 October 2003 concerning the manner in which the Netherlands implemented the Nitrates Directive⁵. Like the Water Framework Directive, the Nitrates Directive includes an obligation to establish programmes and provides basic and supplementary measures by which the objectives of that Directive are to be achieved. The Court held that the Netherlands ought to opt for the same protective regime as the Nitrates Directive, as this was the best way to achieve those objectives. All compulsory measures must be transposed into binding rules in almost exactly the same way as the Directive prescribes. Finally, but no less importantly, from the moment it becomes clear that the objectives cannot be achieved on time, supplementary measures have to be applied. This ruling should be carefully considered when implementing the Framework Directive and it is now clearly difficult to maintain that the obligations under this Directive can be met by other protective measures or a different protective regime (than that set out in the Directive). From another recent case before the Court concerning the implementation of the Habitats Directive by Luxembourg, the same conclusion can be drawn, i.e. that implementation has to correspond as closely as possible to the system and wording used in a Directive⁶.

7. Environmental quality objectives

The statutory rules for environmental quality requirements have been laid down in the Environmental Management Act. This Act implements the environmental objectives of Article 4 of the Water Framework Directive by implementing them in national decrees or provincial bye-laws.

However, the Environmental Management Act needs to be amended in order to be able to include the good ecological status per water type and the 'standstill' clauses in the implementing measures.

The implementation of the environmental quality objectives is one of the key obligations in the Framework Directive, as these define the ultimate aim of the 'good status' of waters. The Environmental Management Act further implements a

number of obligations in the field of monitoring of surface waters and groundwater concentrations and the registration of protected areas.

In this context, a heated debate is taking place in the Netherlands concerning the designation of water bodies. The overriding idea is that when a certain water is not designated as a body of water, the strict environmental objectives and the obligations to monitor and report do not apply to it either. I have grave doubts about this, given the scope of the Framework Directive, which in principle includes the sustainable management, restoration and protection of all waters. In relation to this discussion, Dorette Corbey (PSE) of the European Parliament sent several questions to the European Commission⁷. The Commission's answer through Ms. Wallström made clear that the environmental objectives of the Water Framework Directive should be applied to all waters within the Community. Making use of the exceptions provided for in the Directive, is only possible for individual water bodies and must be justified on genuine grounds⁸.

The ecological objectives for surface waters are new and these new statutory objectives and the necessary measures for achieving them will not only influence water management in the strict sense of the word, but also have an impact on water-related decisions in other areas that fall within the responsibility of water management, such as management of water control works, water defences and earth removals, and decisions in the field of the environment, agriculture and spatial planning. Insofar as possible, good ecological status is determined in conformity with the rules of the Framework Directive in the shape of generic quality requirements which are differentiated in accordance with the type of surface water and established by order in council based on the Environmental Management Act. Given that in a number of cases the ecological status of surface waters concerns water types or protected areas which are only found at regional level, it has been made possible in such cases to delegate the determination of good ecological status in terms of limits or target values to the Provincial Council through provincial environmental bye-laws.

For heavily modified or artificial surface water bodies the good ecological potential may be determined in the same way at national or provincial level.

The Framework Directive also provides for the establishment of chemical water quality requirements for all priority substances. These objectives (good chemical status) replace the quality objectives based on Directive 76/464. The black list (list I) and the grey list (list II) included in Directive 76/464 have also been repealed. The water quality objectives and the measures by which these are to be achieved must be set out in the river basin management plans.

Chemical water quality requirements are, in principle, the same for all surface waters. This means that the good chemical status they are intended to achieve concerns a generally applicable water quality requirement. For this reason, good chemical status is implemented by order in council.

The quantitative and chemical objectives for groundwater bodies are also new. Their substantiation still needs some attention, as does the necessary application of exceptional provisions for each groundwater body (think of less stringent objectives or the extension of the demanded 15-year period to reach the goals of the water Framework Directive).

I would like to make one remark on the new Groundwater Directive. This Directive regulates much more closely direct and indirect discharges and there are, at the moment, grave concerns in the Netherlands over the question of whether dune water infiltration and bank infiltration for the purpose of the drinking water supply will still be possible under the new regime. If one considers these infiltrations as an artificial recharge of groundwater resources (a quantitative measure for the purpose of good groundwater status) then this would fall within the scope of the Framework Directive. However, if artificial recharge is regarded as an indirect discharge, infiltration for the purpose of the drinking water supply will become practically impossible, as extremely strict conditions will apply⁹.

One important improvement to the present rules on quality objectives is that the water quality objectives have now been given a statutory basis¹⁰.

7 PE 347.651.

8 E-1757/04/NL.

9 Van Rijswijk, H.F.M.W. van, "Consequences of the new Groundwater Directive for Infiltration for the Purpose of the Drinking-Water Supply", *European Environmental Law Review*, 2004.

10 Which is quite necessary since in Dutch law there has not been much focus on quality standards, see Spaans/ Michiels, *De waarde(n) van milieukwaliteitsnormen*, Den Haag, 2001 and H. van Rijswijk, *De kwaliteit van water*, 2001, pp. 18-20.

For a number of pollutants, known as priority (hazardous) substances, both the water quality objectives and the emission control measures have been established at Community level and as soon as these have been laid down, they must also be implemented in national law.

8. Combined approach

Article 10 of the Framework Directive obliges Member States to adopt a combined approach to point and diffuse source pollution and this means that for point sources, the best available technology, and for diffuse sources especially, the best environmental practices, must be used. If stricter measures are needed in order to realise the required water quality, such measures must be established by the Member States and emission controls formulated in respect of the resulting water quality. This was already a requirement for the grey-list substances regime under Art. 7 of Directive 76/464, although this requirement was not always fulfilled in the Netherlands¹¹.

As yet, it is unclear whether, and if so to what extent, the Dutch emission policy is in conformity with the Framework Directive. In any case, a more detailed assessment of emission control is considered necessary, especially concerning the relationship between the environmental objectives and the standstill principle.

In this respect, a report by the Integrated Water Management Committee on the priority of sources and the immission test has contributed to the further development and clarification of the combined approach in the Netherlands. The report discusses the question of the priority of substances and sources and the evaluation of residual discharges using the immission test and the connection be-

tween the two. The immission test for sources discharging directly into surface waters is outlined in the report and the test has been made operational for new emissions and increases of existing emissions by means of a step-by-step plan, of which the standstill principle forms a part. The plan has been included in the Water Framework Directive manual (drawn up for use by water managers)¹², though a number of items, like immission tests for emissions into marine waters and for occasional discharges, still have to be gone into in more detail.

9. Qualification of the environmental objectives

In the Netherlands, there has been some discussion concerning the qualification of the environmental objectives. As opposed to, for example, Germany¹³ and Flanders¹⁴, the Dutch government was even of the opinion, initially, that part of the Directive merely provided obligations to perform to the best of one's ability though this is no longer the government's position. The position now is, that the Directive creates obligations to produce certain results, but at the same time, evidently allows for compliance through the exceptional provisions. Whatever the merits of this discussion, here too, one can point to the obligations that may be derived from the ECJ's decision concerning the Nitrates Directive. Even now, it is clear that in the Netherlands, certain environmental objectives of the Framework Directive will in all probability not be achieved by 2015. This would imply that supplementary measures and strict water quality objectives should begin to apply immediately. This cannot wait until 2015.

10. Ambition Note

Partly because it feared that the Framework Directive would have far-reaching consequences, especially for agriculture, the research institute "Alterra" of the Ministry of Agriculture conducted an investigation into a 'worst-case scenario' and from this it emerged that two thirds of Dutch agriculture would have to disappear. As a result of this report the Lower House refused to discuss the Bill for the implementation of the Directive before the ambitions of the Netherlands with respect to the envi-

11 See van Rijswijk, H.F.M.W. van Rijswijk, "EC Water Law in Transition: The Challenge of Integration", *The Yearbook of European Environmental Law*, 2003, pp. 248-304, mainly p. 254. See also ECJ, Judgment in Case C-152/98 - Commission v The Netherlands [2001] ECR I-3463.

12 See: www.kaderrichtlijnwater.nl.

13 Barton, "The Water Framework Directive and its implementation into German Law", in: *The Waterframework Directive, Implementation into German and Dutch Law*, van Rijswijk (ed.), CELP/NILOS, 2003, pp. 31-55.

14 Gonsaels/Vanderstraeten, "De Verwezenlijking van de milieudoelstellingen in het Vlaamse gewest", in: Maes/Lavrysen (eds.), *Integraal waterbeleid in Vlaanderen en Nederland*, Die Keure, 2003, pp. 223-263.

ronmental objectives were made clear. The Ambition Note in question has by now been submitted to the Lower House and it in turn has approved the Bill of implementation¹⁵. For the sake of completeness it must be added that the Bill is entirely silent concerning Dutch ambitions.

11. Recovery of costs of water services

When the existing Dutch system for financing water management is set off against the principle of cost recovery, the Explanatory Memorandum shows that the water services concerned are already, to a large degree, being financed through 'user' taxes and fees. On the one hand, this involves adequate incentives, cost recovery and the principle of 'the polluter pays', and on the other, that charges (currently some 4 billion euro a year) are mainly borne by households, enterprises and the agricultural sector. In this respect, the legislators see no reason for any far-reaching changes to the existing financing arrangements. It is still a topic of debate whether the abstraction of surface water from the national waters, which is presently not subject to a fee, should be made conditional upon a levy or a financial requirement as part of the authorisation for the abstraction of surface water. All things taken together, the government holds the view that the current financing system is in itself sufficiently in line with the basic ideas of the Directive. This does not alter the fact that important proposals are being tabled to amend the financing arrangements, not as a result of the Directive however, but due to the complexity of the current system and also to the major water tasks which the Netherlands faces over the next twenty to thirty years¹⁶.

12. Harmonisation and coordination within water management

Simply establishing that the Netherlands already has in place most of the obligations of the Directive and that only minor adjustments are necessary does not mean that this is the end of the matter. Harmonisation and coordination between the various competent authorities as to how they intend to use the instruments at their disposal is necessary and one may ask whether the existing structures for harmonisation will sufficiently ensure proper

harmonisation. Furthermore, the Directive expressly requires coordination for each separate river basin district. This is the reason why the implementation proposal includes new obligations for the administrative bodies involved concerning the mutual harmonisation of the various plans. These obligations supplement the existing mechanisms under the Water Management Act.

It could well be that the rules concerning internal harmonisation and coordination have to be implemented mainly by means of consultation. Designation orders are the ultimate measure in the Dutch system, the Netherlands being a decentralised single state.

13. Harmonisation and coordination with other policy areas

I have already described the existing structures for harmonisation with other policy areas. The implementation proposal now includes external harmonisation and coordination and requires the Minister of Housing, Spatial Planning and the Environment and the Minister of Agriculture, Nature Management and Fisheries to be co-signatories of the Water Management Notes. It is assumed that by this, they too will help to ensure that water policy will have the required effect in other policy areas.

It is anticipated that with the aid of the ecological quality objectives the effect of water policy requirements on spatial planning will also be promoted.

Harmonisation is also needed between water management and nature management and given the wide scope of the Water Framework Directive and the impact it will have on a large number of policy areas, it would in my view, not have hurt to have emphasised this responsibility more clearly.

IV. The future Integrated Water Act

In a letter of 6 July 2004, the State Secretary of Transport, Public Works and Water Management

¹⁵ TK 28 808, No. 12, Pragmatische Implementatie Europese Kaderrichtlijn Water in Nederland, van beelden naar betekenis.

¹⁶ Government position interdepartmental policy study (IBO) on funding of regional water management.

¹⁷ TK 2003-2004, 29 694, No. 1.

informed the Lower House of her intention to integrate the currently heavily fragmented and sectoral water management legislation¹⁷. To this end, what is known as the Outline Note concerning the Integration of Water Legislation was drafted. A number of reasons lie behind this wish to integrate the legislation on water management. In the first place, it should be pointed out that the Cabinet's Outline Coalition Agreement entitled 'Join in, more work, fewer rules' opted to reduce the burden of regulation. In this context, the developments concerning the review of the financing of regional water management must also be taken into consideration. Intentions to review the relationship between the citizen and the authorities, as well as the relationship between the different authorities that are in charge of water management provides another reason for a review of water management legislation. The intention is to clarify and modernise the responsibilities between the citizen and the authorities and between the different authorities (among other things as regards, duties of care, responsibilities and supervisory relationships).

An important substantive reason for a review of the legislation is the policy-inspired change from the sectoral, object-focused management of water control works to a more integrated, function-based management of water systems. This change has occurred over the last thirty years and it has to be noted that the legislation is no longer equipped for these policy and management developments. This is all the more pressing now, as based on European rules, especially the Framework Directive, it has also been decided to introduce integrated management of water systems and river basins, in which both the quality and quantity aspects play a role. In this context, attention also needs to be paid to initiatives at European level concerning flood risk management¹⁸. Achieving the objectives of the Directive will require more legislation than the Water Framework Directive Implementation Act¹⁹ and it is expected that an Integrated Water Act will be better able to realise this.

The Outline Note concerning the Integration of Water Legislation lays the necessary foundation for this²⁰, as it proposes the drafting of an Integrated Water Act, which is directed at water system management in the broadest sense of the word and will also regulate the infrastructure accompanying the water system.

All this implies that the integration of water legislation is going to be a comprehensive project, and one which, nevertheless, will have to be completed within a very short period of time.

The Integrated Water Act aims to integrate a multitude of statutory regulations in the field of (primarily) 'wet' water management law. To this end, connections are being sought with the concept of water system management and below is a list of the legislation that is to be part of the integration process.

1. What is to be integrated?

The Integrated Water Act aims to combine and integrate the following Acts:

- Water Management Act
- Pollution of Surface Waters Act
- Pollution of Sea Water Act
- Groundwater Act
- Land Reclamation and Dykes Act
- Flood Defences Act
- Public Works (Management of Water Control Works) Act
- Water Management Act 1900

It needs to be further examined to what extent parts of the

- Soil Protection Act (aquatic soils) and the
 - Earth Removal Act
- may be included in the Act, insofar as they concern water system management.

2. Purpose and scope of the Integrated Water Act

The purpose and thus the scope of the Act will be, in particular, the protection, improvement and management of water systems, as regards:

- Safety (in relation to flooding)
- Quality (in particular, the good status of all waters)
- Quantity (emergency overflow and water storage)
- Effective and safe use of water systems

18 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM (2004) @@@@.

19 TK 2002-2003, 28 808, Nos. 1-3; EK 2003-2004, 28 808 A.

20 See inter alia the references to literature and opinions of the Council for Public Administration and the Advisory Committee on Water Management Legislation.

Not only will this make the scope of the Act wider than that of the Framework Directive, but it will also be more in line with developments within Dutch water management (Water Management for the 21st Century, abbreviated WB 21). In this way, new European developments in the field of safety and quantity management may also be anticipated.

3. Probable division into chapters of the Integrated Water Act

1. Definitions
2. Objectives
3. Water system management
4. Coordination and administrative supervision
5. Plans and programmes
6. Water agreements
7. Discharges and abstractions
8. Other acts (prohibitions, obligations to report and register)
9. Research, maintenance and execution of engineering works
10. Exceptional circumstances (contingencies)
11. Financial provisions (recovery of costs)
12. Legal protection (objection and appeal)
13. Further and final provisions

V. Concluding remarks

In this paper I have tried to give a general view of the way in which the Water Framework Directive is being implemented in Dutch law.

As to the existing Dutch water legislation, which I have also outlined, it clearly emerges that the Netherlands has already, for the most part, based its water management and water policy on an integrated approach. However, this policy and its management still has to be translated into legislation. It is the planning system based on the Water Management Act, in particular, that serves as the instrument for integrated water management though it is not sufficient for the genuine and clear fulfilment of the obligations set out in the Directive. In my opinion this is crucial from the point of view of legal certainty, so as to provide clarity for all those parties involved, concerning their obligations that follow directly from the Directive.

After all, the Water Framework Directive is especially ambitious in its aims and – unlike its name suggests – is directed at many more policy areas than just water. This is the result of the objective of achieving ‘good status’ for all waters and the decision to opt for the river basin approach. The Framework Directive will therefore also require great effort in fields such as the environment, spatial planning, agriculture, traffic and transport and substance and product policy (one could think of pollution from diffuse sources). The pursuit of the good ecological status of waters may also give a positive boost to nature conservation.

On the implementation of the Directive in the Netherlands, it was decided not to review the sectoral and highly fragmented Dutch water legislation. That is regrettable and a missed opportunity. However, one should note that the legislative process is very slow in the Netherlands and that the implementation of the – not exactly crystal clear – Water Framework Directive gives rise to many questions which all require further study, while remembering that European law demands that Directives are implemented on time. Given all this, I can understand the decision of the legislators to begin by just implementing those obligations that are absolutely necessary. It has already become clear from the Explanatory Memorandum to the Bill that more legislation as a result of the Directive is to be expected and that it is being prepared as I write. Dutch water legislation would benefit greatly from a thorough review and one in which its compatibility in connection with the Directive is examined.

At this point, I doubt whether it is possible to fulfil the obligations and objectives of the Directive with instruments spread out over so many different Acts. This doubt has surfaced because of the limited size of the implementation Bill and the less than clear rules on harmonisation and coordination in the river basin districts. The reason for this, is the strong wish on the part of all the Dutch authorities to leave unchanged, the existing administrative structures and powers.

The positive elements in the Dutch implementation are the quality objectives, which have now been laid down in statutory rules, the tightening of the standstill principle and increased attention to the relationship between emission control and the quality approach. These were matters where the implementation of the ‘old’ water Directives in the

Netherlands fell short of the mark. It can only be regarded as a positive development that a remedy for these defects has now been found.

I used to be slightly jealous of countries, which regarded the Directive as an opportunity to review their water legislation, and as a result became equipped with all the right instruments for

obtaining good water status. However, so much has happened in the Netherlands in the last year that I am now able to say with some pride that we too are working to achieve integration in our water legislation and that in this we are closely conforming to obligations from the Water Framework Directive.