
THE RELATIONSHIP BETWEEN CENTRAL GOVERNMENT AND PROVINCIAL/MUNICIPAL AUTHORITIES WITH REGARD TO ENFORCEMENT

PETERS, JELIS A.

Director of Policy Affairs, Netherlands Ministry of Housing, Spatial Planning and the Environment, Rijnstraat 8, P.O. Box 30945, 2500 GX The Hague, Netherlands

SUMMARY

An outline is given of the cooperation between the government of the Netherlands and the provincial and municipal authorities in the field of environmental policy. The instruments for environmental law enforcement are discussed. Finally, a review is given of the new structure for the coordination of the enforcement activities of the various authorities concerned.

1 COOPERATION BETWEEN AUTHORITIES IN ENVIRONMENTAL POLICY

In the Netherlands the provincial and municipal authorities carry out a number of important environmental tasks. There are 12 provinces and 636 municipalities, each of which has its own elected government. We prefer to call them "other authorities" rather than "lower authorities".

For a long time the most important task of the other authorities was the implementation of environmental legislation: granting licences and enforcing the law. In the last ten years it has become apparent that environmental laws were not being properly implemented. Many companies had an outdated licence or no licence at all. This was due to the increase in the number of regulations and a lack of money and personnel. Given the growing interest in the environment this was not an acceptable situation.

Agreements were therefore made between the national government and the organisations representing the provinces and municipalities: the Association of Provincial Authorities (IPO) and the Association of Netherlands Municipalities (VNG). In 1989 and 1990, the government allocated extra funds to the other authorities in order to eliminate the backlog, subject to certain conditions:

- Equal contributions to be paid from the provincial and municipal budgets;
- The money was to be used to reinforce the environmental staff;
- Municipalities with less than 70,000 inhabitants had to cooperate with their neighbours, to ensure sufficient expertise;
- Proper programming of activities;
- Annual progress reports, approved by the Inspectorate, were to be sent to the environment ministry; and
- The implementation of environmental legislation must be adequate by 1995 (regular review of licenses, sufficient enforcement activities).

The proper implementation of environmental legislation is not in itself sufficient to achieve the objectives of the National Environmental Policy Plan (NEPP). Many other activities are needed, such as promoting concern for the environment within the various target groups (industry, agriculture, transport, trade, consumers etc.), encouraging energy conservation, separate collection of waste, soil clean-up, and the use of spatial planning to create better environmental conditions. Here, too, the other authorities have an important role to play. Central government reached agreement with the IPO and the VNG on their joint responsibility for the implementation of the first NEPP, that appeared in 1990. Both organisations drew up a framework plan for the implementation of these activities. Again, the government made extra funds available.

All the provinces and a great many of the municipalities decided to participate in these projects. In total, the provinces received some 600 extra full-time equivalents (FTEs) and the municipalities around 2000 extra. The Public Prosecutions Department and the police were also allocated several hundred FTEs extra for their environmental tasks.

The additional funding available was certainly not the only reason for the participation of the other authorities. In the last few years, environmental issues have become very important in the Netherlands. All the political parties are agreed that much more emphasis should be given to this subject. The provincial executives and municipal councils have committed themselves to intensifying their environmental policies. The ideas contained in the NEPP obviously fell on fertile soil.

Our experiences with these agreements have, generally speaking, been good. Of course, there are problems. All the authorities have had to cope with various new developments and set priorities. A committee representing central and municipal government recently concluded that most municipalities will reach an adequate level of implementation of environmental legislation one or two years behind schedule. Continued attention is needed to stimulate the improvement and intensification of municipal environmental efforts.

In December 1993 the second NEPP was issued. Improved implementation of environmental policy at all levels, with better resources, is the underlying theme of this NEPP. Fresh consultations with the IPO and the VNG are necessary to reach agreement on the allocation of tasks.

2 ENFORCEMENT INSTRUMENTS

2.1 Powers of inspection

Under Dutch environmental legislation the authority responsible for issuing licences or receiving notification is also responsible for administrative enforcement, including supervision. To fulfil this role, the authorities concerned need to have the right instruments at their disposal. First and foremost, they need to have the power to be able to check that the rules are being complied with. These authorities are therefore able to designate officials working for them as inspectors. The powers of these inspectors are laid down by law and can be summed up as follows:

- Inspectors may enter all premises other than dwellings;
- They must be given access to books, documents and computer files, of which they may make a copy;
- They may inspect the load on a vehicle or vessel and, in certain circumstances, order a vehicle or vessel to stop;
- They may inspect goods and take samples.

These powers may as a rule be used only if they can reasonably be considered necessary to the inspector's work.

2.2 Powers under criminal law

The instruments available under criminal law are derived from the Code of Criminal Procedure and the Economic Offences Act. The most important of these are:

- Settlement out of court in consideration of a fine (arranged by the investigating officer);
- Drawing up an official police report for submission to the public prosecutor;
- Preliminary judicial investigation;
- Out-of-court settlement (public prosecutor drops charges);
- Seizure of property;

- Provisional rulings, for instance ordering the suspect to refrain from certain activities or to keep property that is liable to seizure in a given place, or ordering that a company be partially or completely closed down or placed in the hands of the receivers.;
- Pre-trial detention;
- Tapping telephones; and
- And of course, prosecution, trial and, ultimately, conviction.

The Economic Offences Act, which contains the bulk of environmental legislation, provides for principal penalties, additional penalties and court orders.

Principal penalties consist of fines and detention or a custodial sentence. The maximum penalties indicated are regarded in environmental circles and elsewhere as too low.

Additional penalties include:

- Closing down a company;
- Forfeiture orders;
- Publication of the judgement.

The court orders that can be imposed under the Economic Offences Act include:

- Putting a company into receivership;
- Deprivation of illegally obtained advantage;
- Restoration of what has been damaged to its previous state.

Despite being court orders 'only' and not penalties, measures such as these can be a heavy blow to the company concerned, which therefore feels that it is being punished. They can be very effective.

2.3 Means of enforcement under administrative law

An inspector will normally inform a company verbally of his findings, indicating the time-limit within which any illegal activities he has discovered must cease. His findings are also entered in the records of the enforcing authority. The company then usually receives a letter stating in writing the offences being committed and the time-limit for ceasing these activities. It is recommended that at least one such warning letter should be sent. If this warning—or a second or even third letter—is ignored, the question then arises of whether to drop the matter, to tolerate it or to take action of some kind. In the latter case, the following instruments are available to the enforcing authority under environmental law:

- Administrative sanctions, including closing a company down;
- Environmental performance bond (public law);
- Withdrawal of the company's licence.

2.4 Means of enforcement under private law

Under certain circumstances it is possible to compel a company to comply with environmental regulations by resorting to private law instead of or as well as administrative law. Actions of this kind can in principle be brought by private individuals as well as government bodies. A person who can show that their interests have been damaged or are likely to be damaged can bring an action for tort. The government, too, can bring an action for damages, for instance to recover the costs of cleaning up soil contaminated at some point in the past by a third party. The State of the Netherlands, which has been confronted with some big bills for cleaning up polluted soil, brought numerous actions in the second half of the 1980s against the original polluters in order to recover the costs incurred, and won.

Rulings by the highest civil court in the country support the right of the government to bring such actions not only to recover financial losses but also to enforce compliance with environmental regulations. The court ruled that failure to comply with the law can damage the interests of the government in protecting the environment.

The government may resort to private law even if other options are open to it under public law, provided that the former is not seriously at odds with the latter. Offenders against environmental legislation can therefore, under certain circumstances, be compelled indirectly to comply with the law by resorting to private law.

It should be added that the use of private law for this purpose is still in its infancy in the Netherlands compared to other countries, notably the United States, where it is far more commonplace. This is mainly due to the difference in cultures (the readiness to sue).

2.5 Toleration

In spring 1990 the transport and environment ministers wrote to the Lower House of Parliament saying that too many offences were being deliberately overlooked in the Netherlands, that this should be allowed to happen in very specific circumstances only and that, where it did happen, a decision granting temporary exemption should be issued. The content of this letter was subsequently incorporated—some would say watered down—in a policy memorandum outlining a joint policy framework for reducing the toleration of environmental offences, which was presented to the Lower House of Parliament in October 1991. The memorandum was supported by the Association of Netherlands Municipalities, the Association of Provincial Authorities and the Association of Water Boards as well as the two ministers concerned. Some of the more interesting points are listed below.

- Toleration means a decision by the authorities not to use the means of enforcement available to them when an offence has been discovered and the issuing by the authorities upon request of a statement to the fact that they will not take any action against an offence which has not yet been committed, whether pending the issue of a licence or otherwise.
- The memorandum applies to administrative bodies only and not to the Public Prosecutions Department.
- A distinction is made between the transitional period from 1991 to 1994 and the period beyond 1995.
- A number of examples are given of instances in which failure to comply with the regulations might be tolerated.
- The memorandum ends by saying that the aim is, by 1995, to have gradually achieved a situation in which offences are tolerated only in circumstances involving *force majeure* or as a transitional measure. In the meantime policy will take into account both the work now being done to eliminate the backlog and the anticipated improvements in the range of instruments available.

3 THE NEW ENFORCEMENT STRUCTURE IN THE NETHERLANDS

The growing number of enforcement activities being undertaken as a result of the NEPP, necessitated greater coordination between the various competent authorities and agencies. On the initiative of the Inspectorate for the Environment, a model was designed in 1990 by a working group comprising representatives of the provinces, municipalities and water boards, the police, the Public Prosecutions Department and the other four Ministries concerned (Interior, Justice, Transport and Agriculture). The main elements of this model are as follows:

- Establishment of structural consultative bodies (groups concerned with enforcement matters) at the three levels of government (bodies of civil servants and bodies of elected officials);
- Annual programming of enforcement activities by all agencies, including the police, at the three levels of government;
- Financing the cost of enforcement on the basis of commitments (business-like partnerships);
- Use of intermunicipal cooperative associations as the core of enforcement activities; and
- At intermunicipal level there must be a central point from which enforcement activities are coordinated and a "team of enforcers".

The main aim of the enforcement structure is to achieve the following:

- All participants working together at each level of government (all government departments, all provinces, all municipalities) as well as vertically (the three levels of government jointly);
- Realisation of an integrated, multi-media approach;
- The administrative authorities on the one hand and the police and the Public Prosecutions Department on the other working together (not as two separate systems); and
- Municipalities working together or starting to do so within an intermunicipal cooperative association (of five to fifteen municipalities).

To help set up the enforcement structure at regional level, six pilot projects were started up in 1991 in order to determine what might be an effective structure and how it might be introduced. Enforcement conferences were also organised at regional level in 1991 and 1992 with a view to providing information and reaching agreement on the enforcement structure. The pilot projects and conferences were funded by the Inspectorate for the Environment. In addition activities were undertaken in many regions to promote cooperation in environmental law enforcement.

The working group that designed the model for coordinating enforcement activities in 1990 is now continuing its work under the name: National Coordination Committee for Environmental Law Enforcement (LCCM). The main task of the Coordination Committee is to monitor and promote the implementation of the enforcement structure, as described above, at all three levels of government. The Committee also identifies bottlenecks and provides solutions (e.g. publication of an Enforcement Structure Manual). The members of the Committee enjoy equal status, each retaining their own responsibility and authority. In this way, systematic and programmed cooperation among all the enforcement agencies is ensured and each individual agency tends to operate in a more systematic way.

Under the new Environmental Management Act the provinces are being given statutory responsibility for coordination environmental policy at provincial level. The Provincial Environmental Forum will play an important role in this respect. Under the new enforcement structure, however, the emphasis will be placed on the regional level. Regional Environmental Forums are being set up at both policymaking and executive level in the Joint Regulations Act regions. Participants in the Forum will include not just the municipalities and regions but also the other enforcement agencies in the region in question. The consultations are designed to ensure that enforcement activities are properly coordinated and consistent with each other. A Regional Coordination and Information Centre is to be set up for all the enforcement agencies in each region. In addition an enforcement team will be appointed for the purposes of joint enforcement.

At the initiative of the LCCM a report was drawn up in March 1992 on the progress made towards introducing the enforcement structure at provincial and regional level. Among other things this revealed that many provincial and regional forums had been set up. In many cases it was sufficient

to expand the existing forums with participants from other bodies. Recruitment of staff for the Regional Coordination and Information Centres and the enforcement teams was proving difficult, as was the drawing up of regional implementation programmes. In addition there proved to be ambiguity about the way in which various elements of the aforementioned pilot projects were in fact being implemented, whereas these projects had in fact been designed to eliminate such ambiguities.

In October 1992 the LCCM presented the national enforcement programme for 1993, which sets out four enforcement priorities.

The first of these concerns the depletion of water resources, especially the enforcement of sprinkling bans. This is primarily the responsibility of the provinces, water boards, police and the Public Prosecutions Department.

The second concerns the growing nutrient load on the environment and acidification. In particular this concerns the enforcement of the various (fertiliser) regulations, which is primarily the job of the General Inspectorate, the Regional Inspectorates for the Environment, the police and the Public Prosecutions Department. The water boards, provinces and municipalities also have responsibilities in this area, namely monitoring and enforcing compliance by livestock farms with the various decrees and the Nuisance Act under administrative law.

The third priority is to prevent the spread of cadmium in the environment caused by industrial discharges, dredgings, sewage sludge, fertilisers and the discharge/dumping of cadmium-bearing products.

The fourth priority is to cut back the use of CFCs, especially for industrial and commercial refrigeration, halon fire-extinguishing agents, solvents and detergents. The municipalities and provinces, in collaboration with the Inspectorate for the Environment, will monitor compliance with the CFC decree during routine Nuisance Act inspections.

National enforcement priorities are meant to percolate through into the provincial and regional enforcement programmes. Various kinds of enforcement programmes may be distinguished:

- The "omnibus model": a collection of the plans of the various enforcement agencies;
- The "coordination model": the enforcement agencies coordinate their activities and keep one another advised of relevant findings;
- The "implementation model": planning, programming and implementation are handled jointly.

The Association of Netherlands Municipalities has issued a circular setting out a step-by-step plan, in which the regional enforcement coordinators are provided with a guide for drawing up a programme following the coordination model, plus certain features of the implementation model, in consultation with all the agencies concerned. In essence this gives rise to a joint programme of the various bodies designated as competent authorities under environmental legislation. In ideal circumstances coordinated enforcement should result in the full regional coordination and planning of the input of financial and personnel resources by all the agencies concerned, as well as fully coordinated joint implementation. For various reasons this will be difficult to achieve in the short term. Many of the agencies in question assign top priority to eliminating the backlogs that have built up over the years and concentrate on the issuing of licences. In addition the various agencies each have their own responsibilities and powers. Coordination is clearly required where there is an overlap of tasks, but less priority is assigned to the joint programming of other activities.

4 CONCLUSIONS

In the Netherlands a fruitful cooperation is growing between central, provincial and local governments and agencies in environmental policy and enforcement. Characteristics of this cooperation are:

- The recognition that the various authorities and agencies are partners and that they carry together the responsibility for a good environmental policy.
- Conversion of the strategically formulated objectives into concrete targets and actions for the regional and local authorities.
- Provision of the local and regional authorities with sufficient financial means and legal instruments.
- Enlargement of professionalism in implementation at the various governmental levels, and promotion of cooperation between the smaller municipalities to reach adequate expertise and professionalism.
- Selection of the enforcement instruments (criminal, administrative or civil law) for concrete situations in mutual consultations.