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Regulating Environmental Utilisation Space (EUS) in the future Dutch Environment and Planning Act: Obstacles and Incentives

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Contents

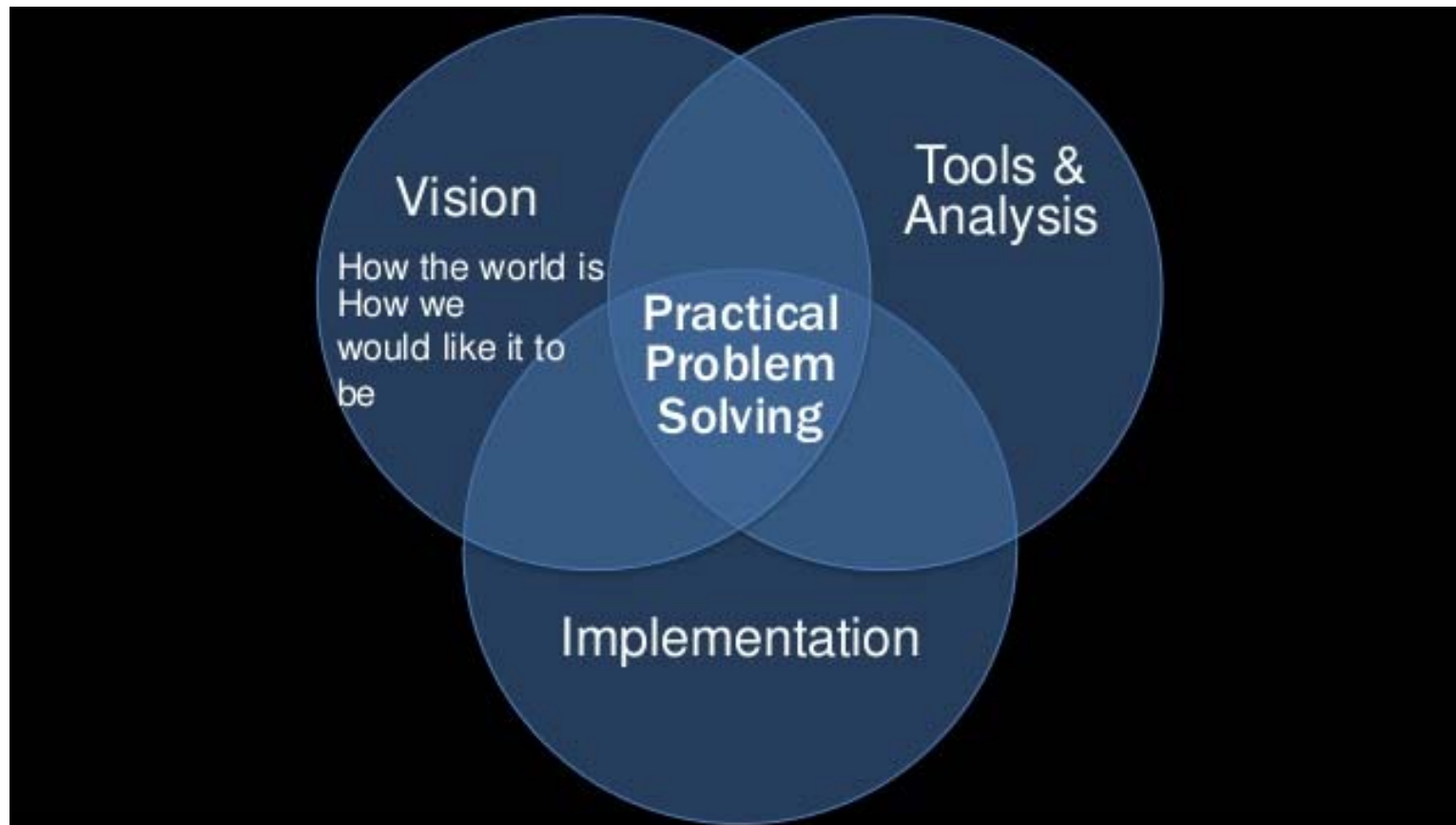
- Introduction to the EUS-concept
- Operationalisation
- Related concepts
- Development in Dutch environmental law
- Environment and Planning Act
- Conclusion

References



Introduction to the EUS-concept

- Originates from Siebert (1982) and introduced in the Netherlands in 1987 by J.B. Opschoor
- EUS defined as:
 - 'the locus of all feasible combinations of environmental services that represent steady states in terms of levels of relevant environmental quality and stocks of renewable resources'*
- Innovative in environmental law and promotes global equity



Source: R. Costanza, 'Ecosystem services and Sustainable Development', Crawford School of Public Policy (2014)



Operationalisation

- Difficulties implementing the EUS-concept in environmental law
- Three steps required to operationalise the EUS-concept according to Sips et al (1994):
 - Determining the demands of the society;
 - Describing the desired use of the environment;
 - Finding balance between 'supply' and 'demand'
- Ultimately a political assessment



Related concepts when designing environmental legislation

- Sustainable development
 - Our Common Future (1987)
 - People planet profit
 - Broader implications than the EUS-concept

- Ecosystem approach
 - Holistic approach
 - Difficult to value 'ecosystem services'
 - Also broader than the EUS-concept



Development of the EUS-concept in Dutch Environmental Law

- In practice for over 30 years in environmental policies, such as aviation law
- Explicitly mentioned in the Crisis- and Recovery Act (2010) to stimulate (sustainable) economic development in:
 - Existing urban areas;
 - Existing businesses;
 - The Port of Rotterdam.



Source: www.infomil.com



Environment and Planning Act (EPA)

> In force in 2020?

- 26 acts (4700 articles) → 1 (349 articles)
- 120 delegated acts → 4
- 120 ministerial regulation → 10

> Main goals:

- improving transparency, predictability and ease of use;
- achieving a coherent approach towards the physical environment in policy, decision-making and regulations;
- administrative discretion by means of an active and flexible approach in order to achieve objectives for the physical living environment;
- improving and speeding up the decision-making with regard to projects in the physical environment.

> EPA provides (6 key) legal instruments



EPA and EUS? I

- › Sustainable development as key objective:
 - 'With a view to ensuring **sustainable development** this Act aims to achieve the following interrelated objectives:
 - a. to achieve and maintain a safe and healthy physical environment and good environmental quality, and
 - b. to effectively manage, use and develop the physical environment in order to perform societal needs.
- › Environmental principles:
 - Policy documents must take into account the precautionary principle, the principle of preventative action, the principle that as a priority environmental damage/degradation must be combated at the source and the principle that the polluter/contaminator pays



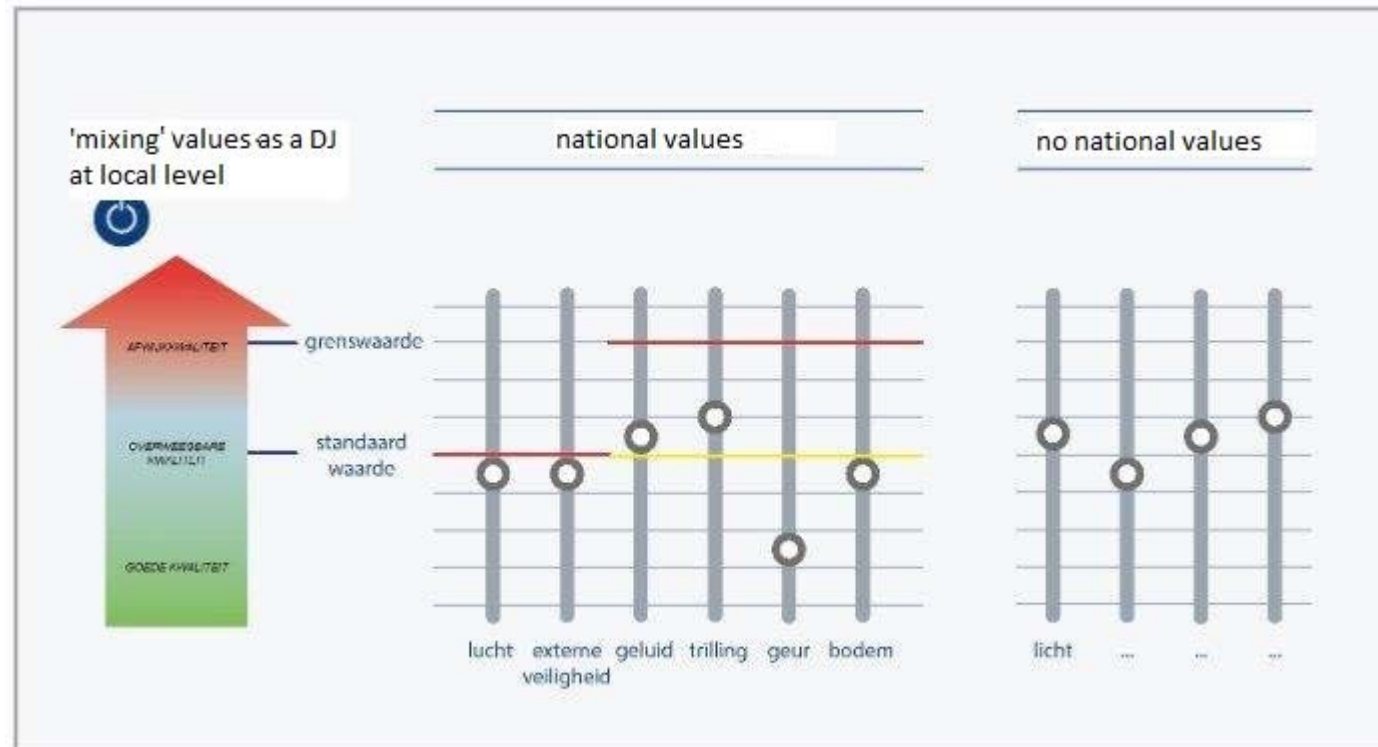
EPA and EUS? II

> Explanatory Memorandum:

- Sustainable development clearly related to the (Environmental) Utilisation Space Concept
- (E)US: 'the **legal** space which exists within an area to enable the realisation of a qualitative good physical environment, as well as to realise (economic) activities in that same environment'
- (E)US concept as an instrument to achieve balance between exploitation and protection of the environment
- (E)US mostly linked to:
 - the competence of municipalities to set area-specific environmental quality standards in environmental plans
 - the competence to introduce a programmatic approach



Area-specific environmental quality standards





Programmatic Approach

- › Goal: achieving environmental quality standards
- › Assessment of project → programmatic approach
 - room for a 'per balance system'
 - Sectoral examples: air quality & nitrogen deposition
- › EPA
 - Programmatic approach as a generic instrument to achieve environmental values
 - Sometimes mandatory
 - At the same time creating (new) EUS



Conclusions

- › Ecological EUS is closely related to SD and EA
 - but not the same
- › SD is key objective EPA
 - Legal (E)US used to strike balance between exploitation/pollution/degradation and protection of the environment
 - Governments are inspired; no incentives or force
- › Two main instruments to implement EUS:
 - Environmental plan: area-specific quality standards
 - Programmatic approach: achieve goals and create (E)US
- › Main threat:
 - large degree of discretion allows to use EUS concept for realisation of economic activity only



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Thank you for your attention

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