



Effective Water Management for All? The Netherlands as a Case Study

Shall we all go Dutch?

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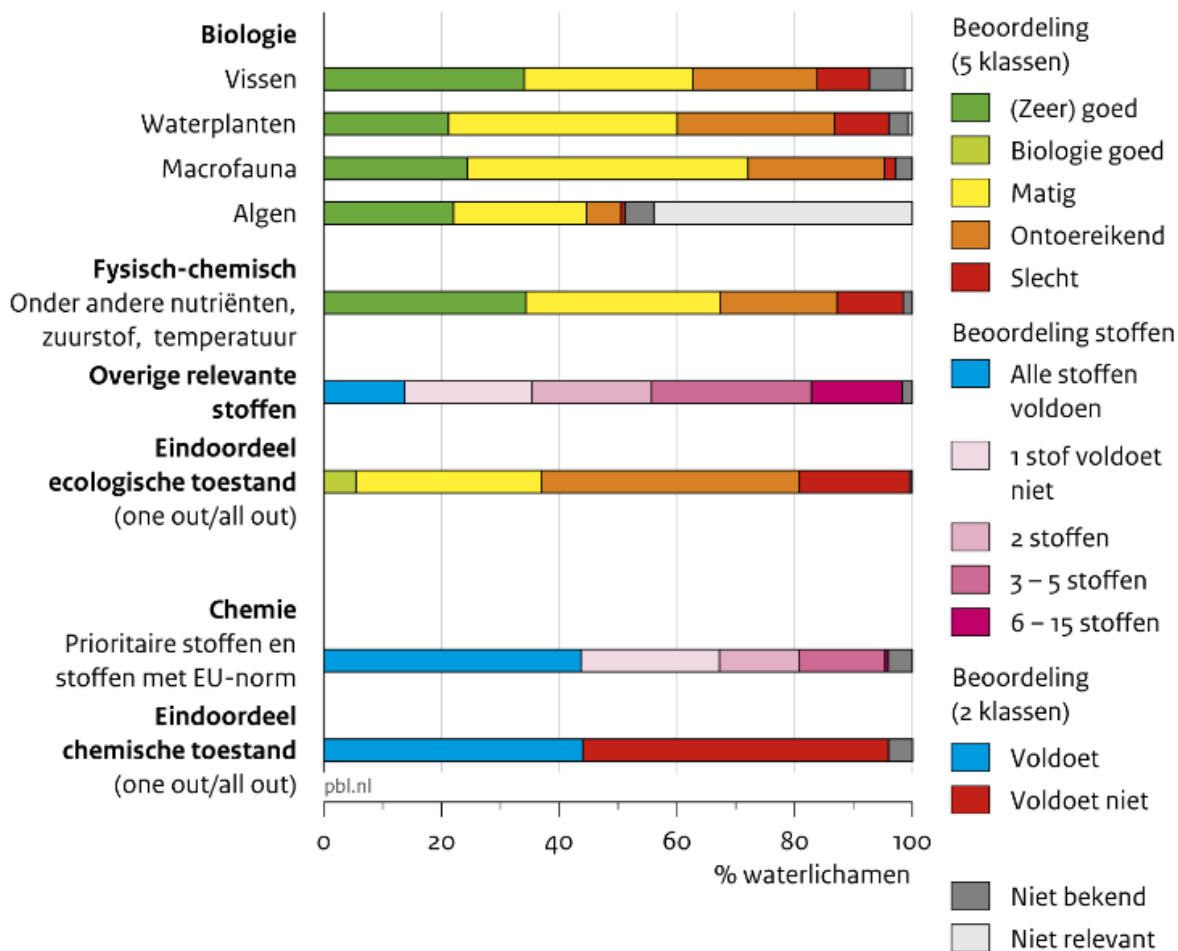




Facts and Figures: Water Quality in the Netherlands

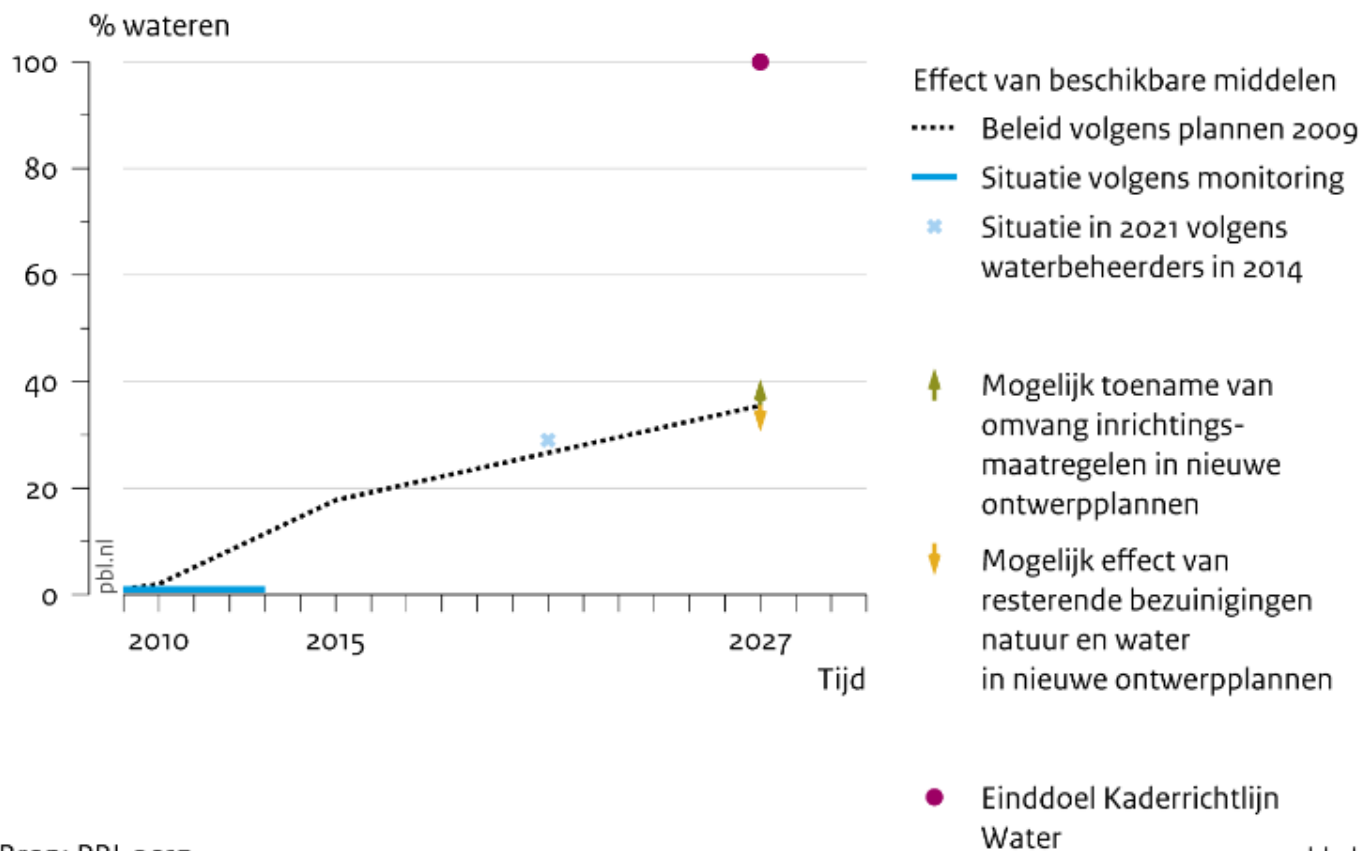


Beoordeling kwaliteit oppervlaktewater volgens Kaderrichtlijn Water, 2013





Doelrealisatie ecologische waterkwaliteit volgens one out/all out-beoordeling van Kaderrichtlijn Water



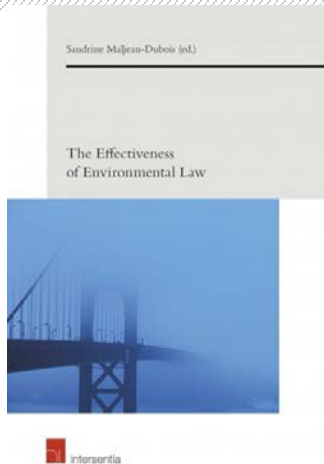


1. Implementation material aspects of WFD
 - a. Binding force WFD's goals
 - b. Meaning of 'no-deterioration' obligation
 - c. Linkage WFD's goals to specific activities
 - d. Programmatic Approach
2. Public Participation in Water Management
 - a. Theory
 - b. Practice
3. Judicial protection against water plans and programmes
 - a. Theory
 - b. Practice
4. Conclusions





Implementation material aspects of WFD



1. Plambeck, E., & Squintani, L. (2017), *De bescherming en verbetering van de waterkwaliteit in Nederland, of: een troebele implementatie van de KRW*, *M en R* 2017/2.
2. Plambeck E., Squintani L., & Van Rijswijk, H. (2017). *Towards more effective protection of water resources in Europe by improving the a better implementation of the Water Framework Directive and the Aarhus Convention in Netherlands*, in Maljean-Dubois, L., *The effectiveness of environmental law*, Intersentia, pp. 243 ff.
3. Squintani, L., & Van Rijswijk, H (2016). *Improving legal certainty and adaptability in the programmatic approach*. *Journal of Environmental Law*, 28(3), 443-470. DOI: 10.1093/jel/eqw022
4. van Rijswijk, H. F. M. W. & Keessen, A. M. 2016, *Transposing the EU Water Framework Directive within a national context – key insights from experience*, *Routledge Handbook of Water Law and Policy*. Rieu-Clarke, A., Andrew , A. & Hendry , S. (eds.). Routledge
5. van Rijswijk, H. F. M. W. & Backes, C. W. 2015, *Ground breaking landmark case on environmental quality standards?: The consequences of the CJEU ‘Weser-judgment’ (C-461/13) for water policy and law and quality standards in EU environmental law*, In : *Journal for European Environmental and Planning law*. 12, 3-4, p. 363-377 17 p.
6. Backes, C. W. & van Rijswijk, H. F. M. W. 2013, *Effective environmental protection: towards a better understanding of environmental quality standards in environmental legislation, Miljörättsliga perspektiv och tankevändor*, *Vänbok till Jan Darpö & Gabriel Michanek*. Gipperth, L. & Zetterberg, C. (eds.). Uppsala: Iustus Förlag AB, p. 19-50 32 p.
7. Keessen, A.M., van Kempen, J.J.H., van Rijswijk, H.F.M.W., Robbe, J. & Backes, Ch.W. (2010). *European River Basin Districts: Are They Swimming in the Same Implementation Pool?*. *Journal of Environmental Law*, 22 (2), (pp. 197-222) (26 p.).





Highlights:

- > Long-standing uncertainty about binding force of WFD's goals
 - Use of the formula 'taking into account' in legal basis
 - Limit values for **ecological elements including chemical substances** not in a binding act
- > Weak linkage between WFD's goals and specific activities
 - No-direct link (*ie* no assessment of specific activities in light of WFD's goals)
 - **Extensive** use of Generally Binding Rules (*ie* no ex ante assessment)
- > Too generous application of programmatic approach
 - Under application of precautionary principle
 - Possibility to compensate by means of effects alien to the project under scrutiny
- > Others:
 - Long-standing uncertainty about the meaning of the 'no-deterioration' obligation
 - Unclearity about monitoring requirements and 'clustering'





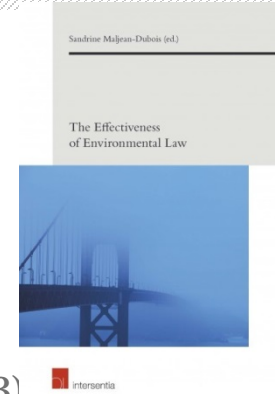
Public Participation

> Theory:

- Aarhus Convention (Arts. 6-8)
- WFD (Art. 14)
- Division 3.4 of the Dutch GALA + Water Decree (Article 4.3)

> Practice:

- **In general public participation in water management is a best practice (Keessen and others (2014))**
- **On the other hand the participation process was so intensive that only agriculture could afford to participate (Dieperink and others (2012))**
- People did not feel heard during the public participation procedures (Van der Heijden & Ten Heuvelhof (2013) & Van den Broek and others (2016))
- Squintani (2017) → Aarhus Paradox





Two main hypotheses to explain such outcomes:

Human Values: Equally distributed representation of all four categories of human values, ie Biospheric, Altruistic, Individualistic, Hedonistic Can improves the effectiveness of public participation procedures.

Perlaviciute and Steg (2015)

Equal opportunities: By focusing more on material equality and less on procedural equality, public participation procedures can be made more effective.





Access to Justice against Water Plans and Programmes

> Theory:

- Aarhus Convention
 - Article 9(3)?
- EU law → Nothing explicitly, but:
 - Article 19 TEU and Article 47 Charter
 - *Zoskupenie I* (C-240/09) ; *Janecek* (C-237/07) and *Zoskupenie II* (C-243/15)
 - ‘*Notice on Access to Justice in Environmental Matters*’ (C(2017) 2616 final)
- Dutch Law
 - No Administrative law route (only indirectly)
 - No criminal law route
 - Civil Law route **potentially** open in theory





Access to Justice against Water Plans and Programmes

> Practice:

- No practice at all!

> Potential reason:

- Civil Law route is too risky (highlights):
 - No admissibility if indirect review by administrative court possible
 - Individual or collective interest is needed, which could be difficult for biodiversity values
 - Causal link could be broken by no direct linkage between plan/programme and specific activity
 - **Promising: cases in the field of climate change (Urgenda) and air quality**





Conclusions

~~GO DUTCH~~

