PBL Netherlands Environmental
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The **Europeanisation** of **spatial planning** in **the Netherlands**

Policy Study

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Policy Report

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MAIN FINDINGS

Summary

- Dutch spatial planning is becoming increasingly more European. This Europeanisation is the result of various EU sectoral policies influencing planning, but also of domestic policy choices. Nearly the entire Dutch territory is covered by one or more EU policies.

- EU policy serves to heighten long-standing tensions between spatial and sectoral policy. A lack of coordination can create conflict, particularly when opposing policy objectives converge within a particular area. Spatial planning can help resolve these kinds of conflicts.

- The Dutch Government has assumed responsibility for a well-functioning spatial planning system. Because the national government serves as an interface between policymaking (EU level) and policy implementation (provinces and municipalities), its responsibility, at the very least, should entail ensuring clear communication between the various layers of government about the implementation of EU policy. In addition, it also means providing expertise, and voicing the concerns of sub-national governments within Europe. This responsibility places limits on the decentralisation of spatial planning.

Europe seen and unseen

Over a decade ago, the former Netherlands Institute for Spatial Research (one of the forerunners of PBL Netherlands Environmental Assessment Agency) published a study called *Unseen Europe* (Van Ravesteyn and Evers, 2004). Drawing on a large number of examples, the authors showed how agreements made at European Union (EU) level have a substantial impact on domestic spatial planning. This impact is still not fully recognised by Dutch spatial planners today, in part due to the lack of spatial policy at EU level, and because EU policy is usually translated into national legislation or regulations by sectoral departments. *Unseen Europe* revealed, among other things, cultural tensions between the cultural differences between the strict and equal application of generic EU policy and the Dutch spatial planning tradition of collaboration, compromise and tolerance.

The study's main recommendation was at the same time a firm warning: 'Although it certainly remains necessary to conduct spatial policy at the national level – if for no other reason than to coordinate EU sectoral policies and integrate them into the planning system – doing so without regard to the growing influence of Brussels will doom it to failure' (Van Ravesteyn and Evers, 2004: 6).

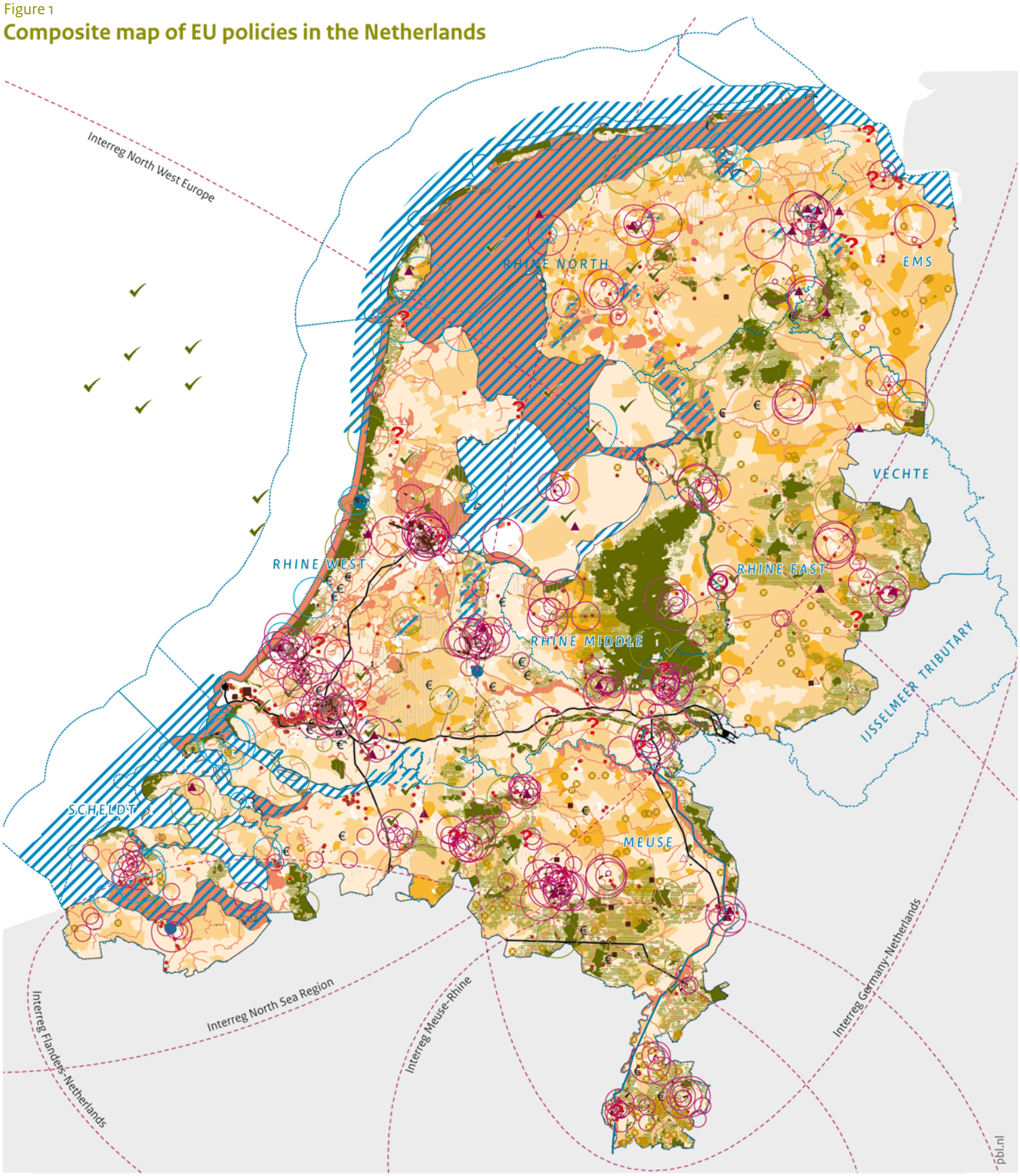
Much has changed within Europe since *Unseen Europe* was published. The EU has grown from 15 to 28 Member States, and from around 380 million inhabitants to over 500 million in 2014. This has made the EU more diverse and complex; it now has more languages, cultures and development levels, and more divergent opinions on the EU. Since the Dutch and French referenda on the EU Constitution in 2005, the previously unquestioned acceptance of growing EU integration has dissipated, and in recent years a crisis of confidence has emerged, poignantly exemplified in current discussions of a 'Brexit'. Even so, the EU's day-to-day work continues; new regulations and guidelines are adopted, policies are implemented or abandoned, policy proposals are submitted and new policy fields explored.

Much has changed in the Netherlands in the same period, as well. The Fourth National Policy Document on Spatial Planning Extra (*Vinex*) was replaced, first by the National Spatial Strategy (*Nota Ruimte*) and then by the National Policy Strategy on Infrastructure and Spatial Planning (*SVIR*). This last document, as its predecessor, envisioned a smaller role for national government and abolished most urbanisation policies including the internationally well-known Green Heart. The position of planning changed within government, as well, and was removed from the name of the ministry.[1] The statutory planning system was overhauled multiple times, as well.[2]

These structural changes were reasons for PBL to revisit the questions addressed in *Unseen Europe*. The current study goes further than its predecessor, and seeks not only to survey but also explain the relative influence of the European Union. In order to put the Dutch situation in perspective, a few foreign case studies were included (on Denmark, Hungary and Germany).

Figure 1

Composite map of EU policies in the Netherlands



Regional policy (ERDF/Interreg/Urbact)

Subsidy (x 1 000 euro)

> 5 000
1 000 - 5 000
500 - 1 000
100 - 500
< 100

▲ Lead partner

△ Partner

LIFE+

Subsidy (x 1 000 euro)

> 5 000
1 000 - 5 000
500 - 1 000
100 - 500
< 100

Fisheries

Subsidy (x 1000 euro)

> 5 000
1 000 - 5 000
500 - 1 000
100 - 500
< 100

€ Public procurement for works

State aid

✓ No objection

? Investigation opened

Concentration of nitrates in upper groundwater

Over 50 mg/l

Air quality

PM_{10} exceeded

NO_2 exceeded

Public safety (Seveso)

Industries (Brzo)

Safety zones

Water quality

Insufficient

Nature

Natura 2000 water

Natura 2000 terrestrial areas

Areas of influence on nature areas

WFD river basin districts

Trans-European Transport Network (TEN-T)

Railway

Waterway

Road

CAP subsidy (pillar 1 + pillar 2) in euros/ha

1 - 250

250 - 500

500 - 1 000

> 1 000

LFA

Natural handicap areas

Dutch spatial planning affected by the EU

Many issues relevant to spatial planning are determined by agreements made at the EU level. Most of the Dutch territory is covered by one or more EU policy regimes. This can be seen in Figure 1, a map of the areas where EU policy affects the Netherlands. This map should not be construed as proof of a 'meddlesome Brussels', as it is nearly impossible to disentangle Dutch and EU interests. After all, Europe and the Netherlands, on the whole, have the same policy objectives (e.g. fair competition and clean air). Moreover, almost all EU policies were adopted with Dutch consent. In fact, many of the policies that are most important to spatial planning were championed by the Netherlands. Two prominent examples are the Habitats Directive and the Floods Directive.

To determine which EU policies should or could be presented on the map, six 'impact types' were distinguished:

1. *Area designation*: areas or locations that are conferred a special legal status
2. *Intervention areas*: locations that require specific measures to be taken
3. *Spatial investments*: areas and infrastructural networks that receive EU subsidies
4. *Sectoral investments*: spatial distribution of non-spatial subsidies
5. *Generic rules*: spatial policies or projects affected by general EU rules
6. *Territorial cooperation*: mandatory and voluntary schemes for cross-border cooperation

Not all the ways in which EU policy affects spatial planning could be depicted cartographically. Research or planning obligations, for instance, can have a substantial impact on the planning process, but are difficult to represent on a map. Other EU policies were left off the map deliberately, such as those on noise pollution, because they do not substantively impact planning. Although each Member State is obliged to measure noise pollution according to the same method, and must draft action plans to deal with problematic cases, the EU has not set any maximum thresholds or performance requirements itself. Furthermore, the map also omits spatial projects initiated to comply with EU policy. This includes, for example, wind parks constructed to achieve EU renewable energy targets, or expansions of port areas to handle the increase in biofuel imports. Although such developments affect both the process and content of spatial planning, the choice of method (for renewable energy, wind vs solar power; for biofuel, import vs production) and the choice of development location are fully at the discretion of the Member State. Finally, it was obviously not possible to map out the changing governance relationships between national government, provinces and municipalities resulting from EU policy. In brief, the map contains many but not all of the ways in which spatial planning is affected by EU policy.

Although not all EU impacts are presented on the map, Figure 1 still shows that there are almost no 'blank' areas in the Netherlands. Nearly the entire Dutch territory is covered by some EU policy regime, sometimes several. The diversity in policy approaches is also clearly evident; for example, as regards the distribution of restrictions and incentives (nature policy uses both strategies by demanding the conservation of Natura 2000 areas on the one hand, and by making investments via Life+ on the other). This demonstrates just how extremely varied and complex the impact of EU policy on spatial planning can be. This study distinguishes three areas in which EU policy may affect spatial planning: via governance, content and process.

A new role for national government

The arrival of the European Union as a 'fourth layer of governance' has altered relations between the other three levels in the Netherlands. As there is no spatial planning on EU level, the EU policies that are relevant to spatial planning are developed and drafted by various sector departments. Each Directorate-General operates in its own way. This means that numerous policy regimes exist alongside one another – something that can be seen, for example, in the various EU subsidy flows. The Common Agricultural Policy is designed and formulated on EU level, with funds being allocated and distributed by national governments to individual farms. The EU Structural Funds (ESF and ERDF), however, are also broadly determined at the EU level, but are shaped and administered regionally (in the Netherlands by provincial partnerships). Both businesses and governments can be beneficiaries. The various actors operate according to their sector department and administrative level within an arena of *multilevel governance*. In practice, national governments and sub-national governments can have diverging interests. The Dutch national government, for example, has advocated the abolition of the Structural Funds for the more affluent Member States, whereas Dutch provincial authorities opposed such a change.

These complex relationships are very dynamic. To begin with, the number of Member States continues to rise, as do the number of Directorates-General, other authorities, policy initiatives and platforms. Two examples relevant for planning are the Directive on

Maritime Spatial Planning (CEC, 2013) and the European Innovation Partnership on Smart Cities and Communities (EIP-SCC). In addition, changes within Member States also affect multilevel governance. Since the adoption of the Dutch National Policy Strategy on Infrastructure and Spatial Planning (SVIR), most spatial planning responsibilities have been devolved to provincial or municipal authorities. These sub-national government authorities have limited say in the EU decision-making process concerning the policies that they are later required to implement. As Member State representatives, national governments have a more powerful voice in EU policymaking and are formally held accountable in cases of non-compliance.

In order to operate more effectively within this arena, Dutch sub-national authorities have expanded their presence in Brussels, by establishing their own offices (House of the Dutch Provinces and G4), and by interfacing with bodies such as the Committee of the Regions and the European Parliament. They share information on EU policy via the 'Europadecentraal.nl' knowledge portal, and publications such as '*Handreiking Europaproof Gemeenten*', a guide for municipalities on EU policies (Kenniscentrum Europa Decentraal, 2008). Furthermore, the Dutch national government has taken steps to ensure compliance with EU policy via the Dutch Act on compliance with EU regulation by public entities 2012 (*Wet Naleving Europese Regelgeving Publieke Entiteiten*) and to ensure that the limit on the budget deficit as agreed in Europe is not being exceeded via the Sustainable Public Finances Act 2013 (*Wet Houdbare Overheidsfinanciën*). Particularly this last measure is controversial and has the implications for domestic intergovernmental relations.

The case study of Denmark, a country with a spatial planning tradition comparable to that of the Netherlands, reveals quite different multilevel governance. For example, the Danish Parliament has a great deal of say over what can be negotiated at the EU level, and a critical stance by domestic politicians can slow the EU policymaking process. Although more headstrong during policymaking than the Netherlands, Denmark is more compliant once it comes to implementation. Because Danish spatial planning has been falling under the Ministry of Environment for some time now, EU environmental directives are not viewed as particularly problematic in Denmark. The tensions are experienced more at the local level.

In summary, multilevel governance is one aspect of the Europeanisation of spatial planning. From the perspective of its responsibility for the spatial planning system, the Dutch national government should focus its attention on the problems that may arise due to suboptimal vertical coordination between municipalities, provinces, national government and the EU – also because suboptimal horizontal coordination between sectors may cause bottlenecks for spatial planning. The Dutch national government cannot leave this horizontal coordination completely up to sub-national authorities. After all, Europe holds Member States accountable for the implementation of EU policy. Moreover, the national government is in a better position than provinces or municipalities to change legislation at the EU level, and it is also the one who partly determines the level of flexibility when transposing EU directives into national legislation (see Chapter 4).

Substantive impacts of EU policy

Figure 1 shows how policies can overlap: in other words, multiple EU policies sometimes apply within the same physical area or location. This accumulation of policies can be seen more clearly in a close up of the composite map; see Figure 2 for two regional close ups.

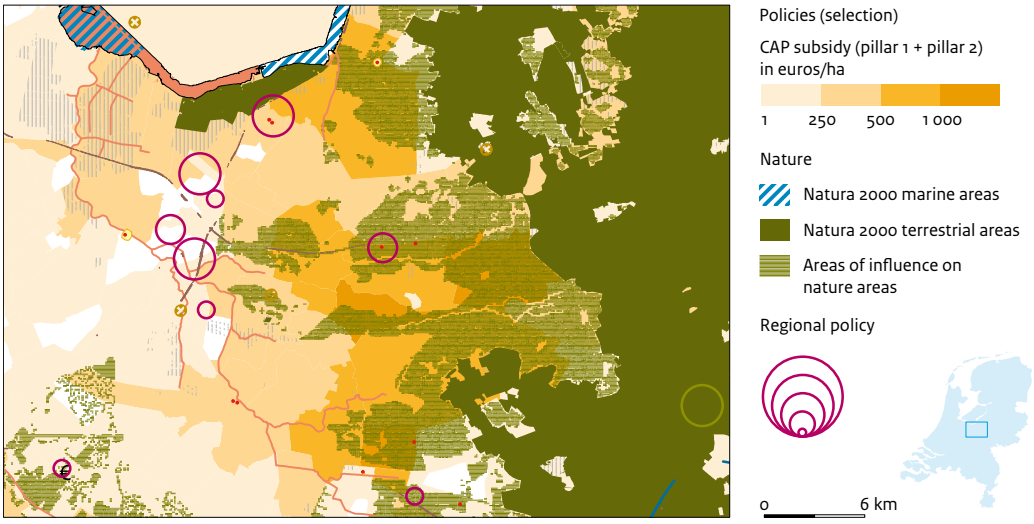
Figure 2 shows that EU policies naturally sort themselves out geographically. Investments that have their origins in, for example, regional policy are concentrated in cities, while those in Life+ and agriculture policies are found outside urban areas. Despite this, overlapping or adjacent policy objectives can still create tension. Investments supported by the TEN-T policy and the structural funds increase the attractiveness of urban areas, and a consequent increase in human activity may cause local environmental quality – especially of air and water – to decline. On the other hand, domestic subsidies that are meant to strengthen the local economy may be considered unlawful state aid.

There is a certain amount of tension between policies in rural areas as well, principally between ecological goals (biodiversity, water quality) on the one hand, and economic production (agricultural subsidies, Trans-European Networks and structural funds) on the other, as can be seen in Figure 2. In addition to the Natura 2000 areas themselves, areas in the vicinity can also be affected by Natura 2000 policy because of the likely presence of endangered species. This can produce tensions with agricultural policy as the bulk of CAP subsidies are not used for rural development but for agricultural production, which can have detrimental effects on wildlife. Figure 2 shows that the subsidies received by farmers in Barneveld and Nijkerk near the Veluwe, the largest unbroken Natura 2000 area on land, are among the highest in the Netherlands. It also shows that the water quality south of the nature reserve De Nulde, near Putten, does not meet the standards of

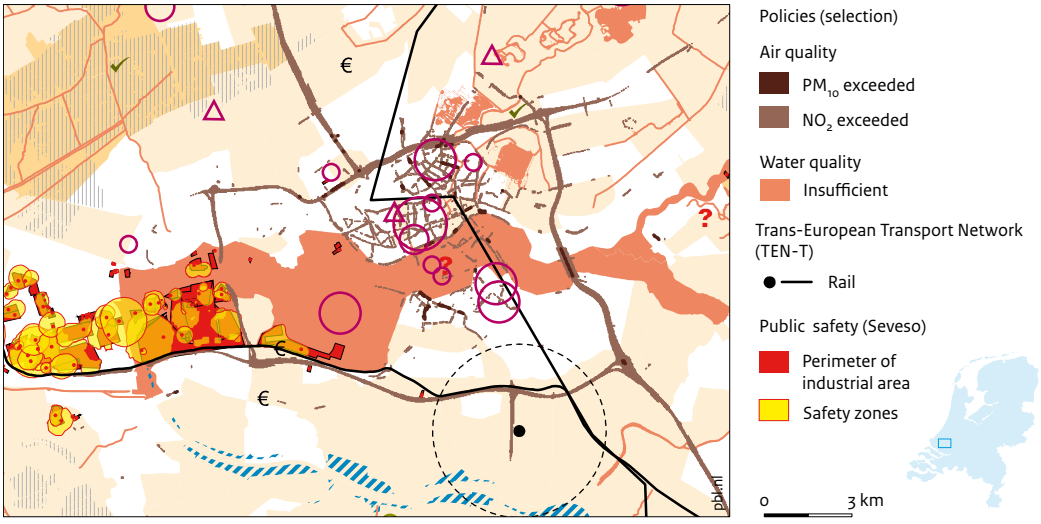
Figure 2

Overlapping EU policies (composite map detail)

Policies in rural areas (western Veluwe)



Policies in urban areas (Rotterdam region)



Sources: see composite map

the Water Framework Directive. Finally, EU subsidies for regional development have been granted for the 'sustainable business park' of Stuttersveld Zuid, while the air quality at the nearby A12 motorway is below EU standards. It is likely that the business park development will attract additional traffic, thus worsening local air quality. So far, these kinds of coordination problems between sectoral objectives are resolved in planning practice; this conclusion was drawn in a series of discussions with provincial spatial strategists and from earlier studies on the 'stacking' of EU policy (Zonneveld et al., 2008). The fact that a lack of coordination of EU policy can lead to problems in practice is demonstrated by the case study on Hungary. In Hungary, the objectives of the Trans-European Networks (TENs) that are intended to solve the shipping bottlenecks on the Danube run directly counter to the implementation of both Natura 2000 policy and the Water Framework Directive, as well as the investments made by the structural funds. In the end, the Hungarian authorities were obliged to balance EU transport ambitions (and their related subsidies) against EU environmental policies and the possible fines for non-compliance.

In summary, the spatial planning system of the Netherlands is becoming ever more European, in the

sense that the Dutch National Spatial Structure (in the Dutch policy document SVIR, describing the national interests) consists increasingly of EU policy. Over the past 20 years, the amount of relevant EU spatial policy has increased, while national interests have decreased substantially. With the increase in EU policy, the influence of a sectoral approach has grown implicitly for spatial planning, in terms of both practical solutions and institutional change. The Dutch Government must remain vigilant to ensure that practical solutions can still be achieved. However, it cannot do so alone; the knowledge and capacity available on local levels also need to be utilised effectively.

Coupling EU policy and spatial decisions

Dutch spatial planning is aimed at accommodating competing land-use interests by making integrated assessments and seeking optimal solutions. Terms such as consensus and compromise are at the heart of Dutch planning. Many EU standards and objectives are seen as inflexible by Dutch planners; these standards are non-negotiable and leave little room for manoeuvre. Whether a project complies with EU standards or contributes to EU objectives is becoming more important. Dutch planners are increasingly faced with the imperatives of sectoral policies.

Whenever spatial decisions – such as land-use plans or building permits – depend on EU policy, we speak of 'coupling'. The degree of coupling is determined in various ways. Legislation sometimes already mandates a strong coupling with spatial planning, such as under the Seveso Directive and the Birds and Habitats Directives: these directives call for explicit spatial zoning.

In other cases, coupling is achieved when EU policies are implemented into the Dutch system. There are various options for managing the coupling. The procedure, for example, can be designed in such a way that not every spatial decision needs to be checked against EU policy, independently. The Water Framework Directive is an example of this. The procedure itself could be made more flexible, for instance, by enabling other considerations to be weighed in the decision. The degree of coupling and whether this coupling is likely to produce problems also depends on the characteristics of the legal system and the spatial planning system. If it is easy, both formally and practically, to gain access to the courts to appeal against a spatial decision, the interested parties have more options to point out that the decision is inconsistent with EU policy, and thus the result is a strong degree of coupling.

The importance of the spatial planning system in determining coupling can clearly be seen by comparing the Dutch and German situations. In Germany, the most spatially relevant EU policy is administered by sectoral planning (*Fachplanung*), instead of spatial planning (*Raumplanung/Bauleitplanung*). For *Fachplanung*, the sectoral department organises both the horizontal coordination with other sectoral interests and the vertical implementation of the plan. Consequently, EU policy is more in line with German practice. Although Germany also has its problems, these are of a different nature than those in the Netherlands. In Germany, EU policy provided stakeholders in Germany with more possibilities to participate in and appeal against decisions than the system was accustomed to handling. In the Netherlands, the same requirements resulted in fewer bottlenecks because the Dutch system is designed differently on this point.

There are various ways to deal with a strong coupling. A common strategy is simply to accept it as a given and engage in a strategy of 'Europe proofing' – making every effort to ensure a plan or project is completely in line with EU policy (e.g. by conducting thorough research as a foundation for a plan, and by prioritising EU policy in order to avoid litigation). In this sense, EU policy has increased the juridification of spatial policy. However, the Dutch national government can also manage the level of coupling by, for example, rethinking a directive's implementation. Such 're-transposition', if approved, can be performed so that EU standards no longer apply in certain cases. The programme approach is an alternative strategy. This combines a number of spatial projects into a package, together with measures sufficient to offset the negative effects and achieve the EU target. In this way, not every spatial project needs to be checked separately for compliance, only the programme as a whole.

In summary, in order to avoid bottlenecks and retain the local decision-making discretion traditionally enjoyed in Dutch spatial planning, a continual management of the coupling between EU policy and spatial planning is needed. However, a strong degree of coupling cannot always be avoided, and may sometimes be desirable, such as from the perspective of public health. In order to deal with coupling more effectively, the EU system was taken as the starting point in the preparations of the new Dutch Environment and Planning Act. Whether this will really prevent bottlenecks from arising between EU policy and spatial planning remains to be seen. For now, it is contributing to the Europeanisation of Dutch spatial planning.

Conclusion

What has changed since the publication of *Unseen Europe*? Over the last decade, various strategies have been developed in spatial planning practice to deal with EU policy and prevent bottlenecks. This is making spatial planning more international, sectoral, programme-oriented and – through 'Europe proofing' – more juridical. In other words, Dutch spatial planning is becoming more European and this Europeanisation is beginning to iron out differences between Dutch and EU approaches. This means there is less friction and, in case such friction does occur, it can be dealt with more swiftly and easily. Nevertheless, there is also a role for the national government with respect to its responsibility for ensuring the planning system functions well.

There are various reasons for the national government to maintain an active role in spatial planning. In the first place, the government should ensure that integrated assessments and decision-making are still possible. The national government remains the party that converts EU policy into national regulation and, thus, designs the coupling with spatial planning. The national government also has to set up and coordinate any national programmes, ensuring that flexibility exists on a local or regional level. In cases of policy conflicts, the national government may attempt a re-transposition, in consultation with the European Commission. Although this is no easy task, it is even harder for sub-national authorities to achieve, as they are further removed from the European arena. Sometimes managing the coupling between Dutch spatial planning and EU regulation calls for a reform of the national planning system itself – and this is then also a national government task.

In the second place, the role of government is also that of an intermediary. It should not merely be a conduit for spatially relevant EU policy, although this may be suggested by the decentralisation of spatial planning and passing on accountability with respect to EU-policy compliance. After all, the national government actively participates in the EU policy-making process. In its pledge of responsibility for the planning system, the national government needs to inform itself of how provinces, municipalities and water boards plan to implement EU policies and listen to their opinions on the matter. This would help to ensure that these parties have a voice early on in the EU policy-making process. Although the provinces are present in Brussels, their voice is never quite as powerful as that of the national government.

Notes

1 In the reorganisation of ministries in 2010, the departments of spatial planning and the environment – previously under the former Ministries of Housing, Spatial Planning and the Environment (VROM) and Transport, Public Works and Water Management (V&W) – were brought under a new Ministry of Infrastructure and the Environment (IenM). The department of Housing now falls under the Ministry of the Interior and Kingdom Relations (BZK).

2 Since the implementation of the Spatial Planning Act (2008), government authorities use different legal instruments than before, and responsibilities have been reallocated. The Environmental Licensing (General Provisions) Act (2010) and the Crisis and Recovery Act (2010) subsequently made a number of changes to the legal system. The new Environment and Planning Act (in force in 2018) again will thoroughly change the spatial planning system.

FULL RESULTS

Impact of EU policy

Although no official spatial planning policy exists at the EU level, EU sectoral policies exert influence on spatial developments and spatial planning in the Netherlands. This influence can concern the content of spatial policy (i.e. land use and urban development), the decision-making process relating to spatial projects and governance within the spatial domain. This chapter provides a framework for investigating the various ways that EU policy can affect spatial planning.

1.1 Motivation

Various studies have noted that myriad EU policies impact spatial developments and the spatial planning process in the Netherlands (e.g. Janssen-Jansen and Waterhout, 2006; Van Ravesteyn and Evers, 2004; Zonneveld et al., 2008). This impact has sometimes caused problems for planners operating within the comprehensive integrated approach due to conflicting aims or insufficient flexibility. The difficulties encountered in practice, however, cannot be completely attributed to the policies themselves; they are also (and probably mainly) the result of the physical and institutional attributes of the Netherlands and choices made in transposition (Rli, 2008). Moreover, EU policies can create opportunities and regions and municipalities are already taking advantage of multilevel governance by seeking EU support for their own regional agendas (Rob, 2013).

The need to understand the possible effects of EU policy on spatial developments and planning has increased with the decentralisation of spatial policy in 2011. The National Spatial Structure, which is the responsibility of the national government, increasingly consists of EU policy. Even though the national government translates many EU policies into domestic policy, sub-national authorities must still understand how they can affect their own spatial policies. Do uncoordinated EU sectoral policies converge or overlap in a problematic way? How much leeway is there for finding solutions at the national/sub-national level, and how do other countries deal with these issues?

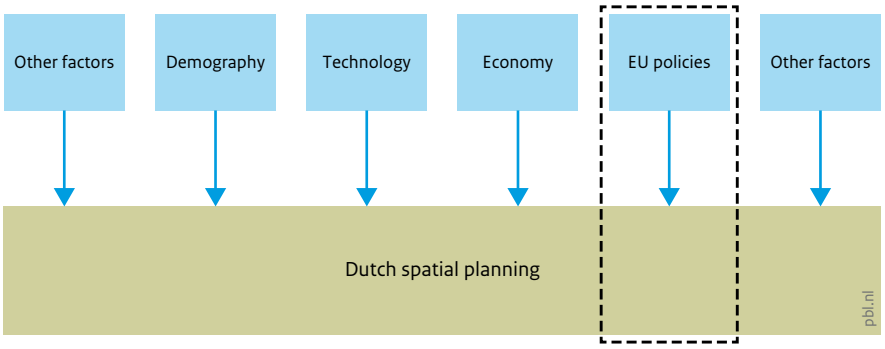
1.2 Objectives and scope

The aim of this study is to determine the influence of EU policies on Dutch spatial planning and explore solutions for observed problems. This is necessary for ensuring that a well-functioning spatial planning system exists (for which the Dutch government has pledged its responsibility), the proper implementation of EU policy and strategic action in the EU arena.

Because of this aim, this study does not look at matters such as the development of a potential European spatial planning (e.g. Faludi and Waterhout, 2002) and the many discussions concerning territorial cohesion, which since the Lisbon Treaty (2009) falls under the jurisdiction of the EU (e.g. Waterhout, 2008; Dühr et al., 2010; Faludi, 2010), unless they are found to have a demonstrable effect on the Dutch spatial planning system. This study contributes to the literature on the Europeanisation of spatial planning (see Giannakourou, 2012, for an overview), although it should be noted that most of these studies (e.g. Waterhout, 2007; Faludi, 2014) focus less on the 'hard' influence of sectoral directives, regulations and subsidies and more on the 'soft' influence of policy concepts and voluntary EU transnational partnerships.

This research focus should not be taken to imply that EU policy is the only, or even main, factor affecting the Dutch spatial planning system. In fact, the major challenges now facing Dutch spatial planning, such as demographic developments or the breakdown of the land-use model, have very little, if anything, to do with EU policy (see e.g. Kuiper and Evers, 2011, for an overview). This study, therefore, makes no attempt to conclude how important or far-reaching the influence of EU policy is compared with other factors. Moreover, our examination of the impact of EU policy on Dutch spatial planning is by no means intended to suggest or reinforce an image of 'European interference'. It should be stressed that EU policy is not simply imposed: the Netherlands has always been involved in the policy development and decision-making process in Brussels. In fact, many of the directives that affect spatial planning were championed by the Netherlands. Furthermore, the observation that the spatial planning process is influenced by or conflicts with certain EU policy does not mean that the policy in question does not serve a worthy purpose. The aim of this study is only to show that influence exists and how it

Figure 1.1
Definition of research area



Source: PBL

could be dealt with, rather than engage in a normative discussion of the merits of particular policy objectives or subsidiarity.

1.3 Theoretical framework

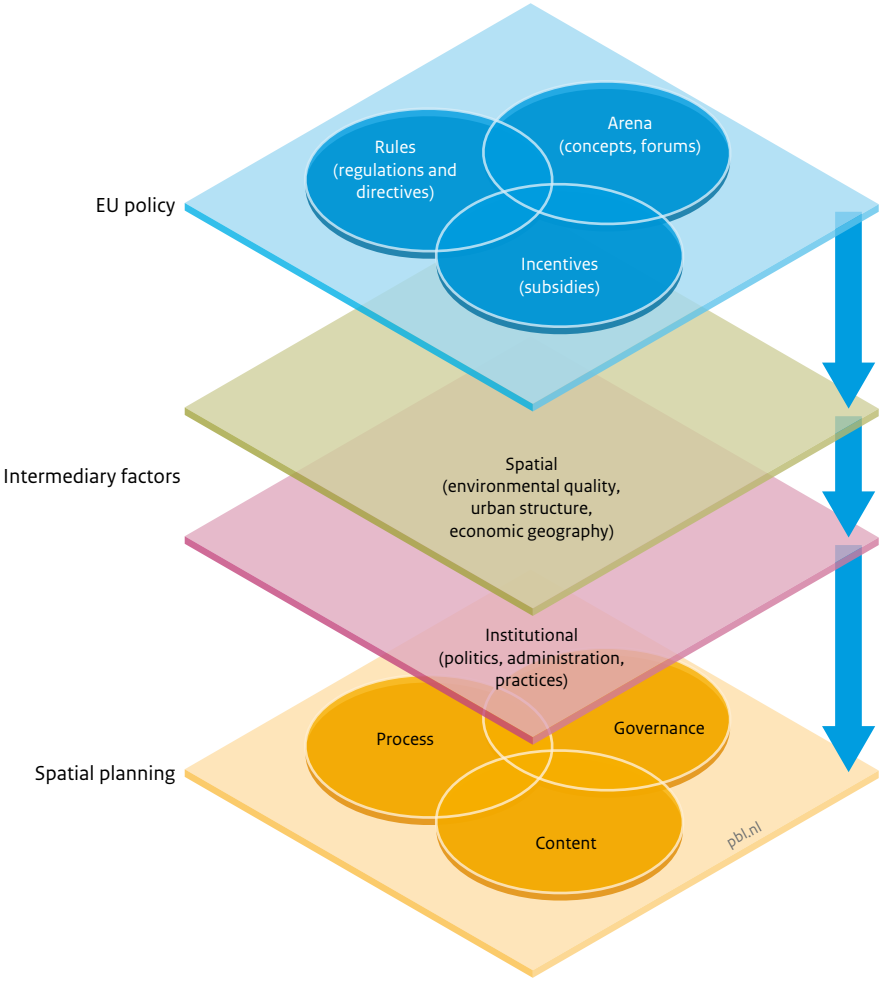
To help understand the relationship between the Dutch spatial planning system and EU policy, this study presents a conceptual framework which defines and unpacks both terms into constituent parts. As regards the causal relationship being explored, this study takes a very broad view; both direct and indirect effects as well as intended and unintended consequences of EU policies are considered. This is the spirit of many Territorial Impact Assessment (TIA) methods currently under development (Evers, 2011). The terms influence, impact and effects are usually used more-or-less interchangeably throughout this study. In general, 'influence' denotes the existence of some kind of causality, while 'impact' is used analytically to highlight a specific relationship.

1.3.1 Types of influence

In the introduction to their book *Grenzeloze Ruimte* (Borderless space), Janssen-Jansen and Waterhout (2006) state that the EU influences spatial planning in four distinct ways. This distinction is used in this study to categorise the *origins* (see Figure 1.2) of the European influence. Firstly, according to those authors, the EU can act as a 'stimulator' by providing subsidies; in this case it makes something new possible. The more general term 'incentives' is used in this study, as some incentives can reinforce the existing situation; for example, in the case of income subsidies for farmers. Secondly, Europe can, according to Janssen-Jansen and Waterhout (2006), be a 'hindrance' through regulations that restrict planning initiatives (e.g. by forbidding state aid). This study uses 'rules', again a more neutral term. Although many rules can be considered a hindrance, they can also provide structure, and even act as a stimulator by reducing uncertainty. Thirdly, the EU is an 'arena' where actors involved in spatial planning can interact (Janssen-Jansen and Waterhout, 2006); for example, to draw up best practices or discuss documents such as green papers and white papers (Van Veen and Heinen, 2013). The publication of benchmarks (naming and shaming) is a tried and tested way of exerting informal pressure. Similarly, providing information about spatial developments or the impact of EU policy reinforces this process of Europeanisation. With time, a common language and conceptual apparatus can develop among planners operating in the EU arena, which can influence policy at home (Faludi, 2010). In some cases, this 'soft policy' process can lead to a request for 'hard policy' in the form of formal rules or incentives. Fourthly, Europe is, in some cases, a 'necessity'; for example, when a spatial issue can only be properly addressed in a cross-border way (e.g. flooding or air pollution) or if international interdependence (e.g. between sea ports) requires coordination and binding agreements. As this study aims to explore the influence of EU policy rather than the policy development process, 'Europe as necessity' is not very relevant as an independent category. The other three types of EU influence (incentives, rules and playing field), therefore, comprise the first layer in Figure 1.2.

The influence of EU policy on Dutch spatial planning depends on the 'sensitivity' of the Netherlands to the particular policy. A study by the Dutch Council for the Environment and Infrastructure (VROM-council, 2008) argued that two factors determine sensitivity to EU policy; here, these are called 'intermediary factors'

Figure 1.2
Influence of EU policies on spatial planning



Source: PBL

because they comprise the two middle layers of the figure. The first layer of factors consists of spatial/geographical characteristics. Rules concerning viniculture in mountainous areas, for example, are obviously irrelevant to this flat coastal country, and thus to its spatial planning system. On the other hand, as a highly urbanised country, the Netherlands would be relatively more sensitive to EU environmental policies (Rood et al., 2005). In many cases, environmental quality in the Netherlands ranks amongst the worst in the EU (for an overview, see Natuur & Milieu, 2011). Similarly, the economic geography of the Netherlands has made all its regions ineligible for cohesion policy funding directed at economic development (the former Objective 1 areas). The second layer of intermediary factors, the institutional characteristics, relate to how spatial planning is organised, defined and implemented. The way in which access to the courts is arranged, for example, is an important factor determining the sensitivity of individual Member States to EU regulations which rely on citizens for their activation (Backes, 2006). Administrative relationships between national government, provinces and municipalities and other stakeholders (governance) also affect how a certain EU policy is interpreted and implemented. Finally, the Netherlands can be sensitive to EU policy as a result of the informal rules and standards that exist in the spatial planning system. In the Netherlands, spatial development takes place in consultation with many different actors, and an attempt is made to balance and, to a certain extent, trade off interests. This tradition of consensus, compromise and tolerance, but also the desire to balance policy objectives, can influence the approach taken to EU policy in the Netherlands and, therefore, how EU policy affects the spatial planning system.

Table 1.1
Percentage of policy files influenced by EU policy

	Municipality of Lelystad	Municipality of Almere	Province of Flevoland
No effect	51.5	64.2	45.1
Effect	48.5	35.8	54.9
- Direct	12.5	16.7	61.5
- Indirect	96.9	86.7	46.2
N	66	81	51

Source: Fleurke and Willemse (2007: 81)

It is also important to describe how EU policy can impact planning (bottom layer). First of all, EU policy can affect spatial development; for example, if certain areas are zoned in a particular way (e.g. the Habitats Directive and the Seveso Directive). EU policy, for example pertaining to the internal market, can also affect the intensity and direction of flows (e.g. traffic, migration or trade), which can indirectly affect the spatial planning system. Secondly, EU policy can affect the spatial planning process by, for example, mandating research (e.g. environmental impact assessments) or setting public procurement rules. Lastly, EU policy can affect governance relationships, primarily as a result of the institutional sensitivities discussed above. For example, the mandatory co-financing required under the structural funds can affect intergovernmental budgetary negotiations.

1.3.2 Degree of influence

The influence of EU policy is notoriously difficult to quantify. Jacques Delors once predicted that, by the end of the 1990s, 80% of all socio-economic policy legislation in the Member States would come from the EU (cited in Christensen, 2010: 34). Moore (2008) estimated that 60–80% of all local and regional legislation in the EU would have its roots in EU policy. In the early 2000s, it was believed that 60% of all legislation, and even 80% of environmental legislation in the Netherlands, would originate in Europe (cited in Bovens and Yesilkagit, 2010). Bovens and Yesilkagit (2010) attempted to calculate this empirically. The result was much less extreme than earlier predictions; fewer than 20% of all parliamentary acts and ministerial decisions in the Netherlands were due to the implementation of EU directives (although this percentage was higher for environmental policies). Applying the same methodology to other Member States produced similar results.[1] However, calculations such as these say nothing about the influence of these regulations in practice or the nature or desirability of this influence.

Very few empirical studies have been carried out on the effect of EU policy on policy processes in the Member States. One important exception is Fleurke and Willemse (2006, 2007), who investigated the influence of the EU on 'policy files'[2] in Flevoland. The results show that more than half of all the files studied were influenced by the EU. What was striking was how many were indirectly affected (i.e. through regulations imposed by a higher level of government). Influence varied according to the policy file; the EU's influence on culture and education was very weak, but relatively strong on spatial planning (the environment and the economy, in particular), affecting 62.5% of policy files in Lelystad, 36.0% in Almere and 73.9% in Flevoland. This study, therefore, confirms the idea of Europe as important but 'unseen' as far as spatial planning is concerned (Van Ravesteyn and Evers, 2004).

In addition, Fleurke and Willemse (2007) defined six indicators for how EU policies can affect policy files of sub-national authorities (see Table 1.2).

These results nuance the picture commonly painted of Europe as a hindrance (e.g. Corbey and Verdaas, 2007; De Zeeuw, 2013). In the cases of Almere and Lelystad, the number of opportunities was greater than the number of constraints. For the province of Flevoland, this was the reverse, although only slightly (53% and 57%, respectively). Lelystad stands out, with 81% of all EU influence considered an opportunity. In an earlier study into spatial planning and environmental policy files using data from Lelystad, Fleurke and Willemse (2006) found that a significant proportion of the influence on spatial planning was regarded as positive (in most cases complementary). In no case was EU policy considered an obstruction to municipal policy – at worst (33%) it was considered as hampering. Even in these cases, this says little about the desirability of either policy: a proposal for a recreational centre in Lelystad was found to conflict with the Birds Directive (Fleurke and Willemse, 2006: 95), both of which are worthy objectives.

This last example also demonstrates just how difficult it is to assess the influence of EU policy on spatial decisions and policy processes at every level in the Netherlands based on criteria such as opportunities and constraints. In fact, it is impossible to disentangle Dutch and EU

Table 1.2
Types of EU influence on policy files

Constraints	Opportunities
Enforcement: the EU compels an authority to undertake a decision it would not have taken otherwise. Example: Habitats Directive.	Invitation: the EU sets the local agenda and the sub-national authority has the possibility of withdrawing from the incentive, but the incentive is sufficiently attractive to warrant taking the according decision.
Hampering: if a sub-national decision can only be implemented with the necessary cooperation or permission of the EU, or if European rules limit the discretion in the formulation or implementation of a policy. Example: public procurement.	Facilitation: when local officials welcome the obligation of an EU rule to improve decision-making or because EU funds expedite an existing project. Example: public procurement.
Obstruction: desired alternatives are not considered because of EU (non-decision) influence. Example: Habitats Directive.	Enabling: an unattainable desire that can be fulfilled with the support of the EU. Example: regional policy.

Source: Fleurke and Willemse (2007: 75–76).

'interests', as Europe and the Netherlands, on the whole, work towards the same policy objectives (e.g. fair competition and clean air). Moreover, nearly all EU policies were adopted with Dutch consent. In fact, many of the most relevant rules for spatial planning were proposed or championed by the Netherlands, two prominent examples being the Habitats Directive and the Floods Directive. Given the inextricable interlinking between EU policy and Dutch policy frameworks and the similarity in policy objectives, 'influence' is perceived mainly in terms of goodness-of-fit.

Nevertheless, there are some distinct differences between EU and domestic policy. One concerns inflexibility of the former. EU law takes precedence over national law and an EU rule cannot simply be changed by national governments if implementation problems are encountered in practice. The Dutch notion of 'tolerance' (pragmatic non-enforcement) is an unknown concept in Brussels (Van Ravesteyn and Evers, 2004). Because of this, EU policies (e.g. Natura 2000) generally take precedence over national policy (e.g. National Ecological Network) in spatial planning practice. This can also be seen in the spatial planning decision-making process; individuals can lodge a complaint against the government should it fail to act in accordance with EU legislation. A report of unlawful state aid, for example, can have significant and unexpected ramifications for a spatial development project.

A second difference is that EU policy often creates international dependencies and therefore alters governance relationships. Because of the Water Framework Directive and the Floods Directive, for example, planning decisions on water quality and quantity are now taken at the river basin level. Even without enforcement by the European Commission, a unilateral decision could incur resistance from the international partners. The same applies to EU programmes such as Interreg that provide subsidies for cross-border cooperation. In each case, and as shown above, EU policy can hamper, limit, encourage, complement or facilitate national policy. This effect, and its desirability, depends very much on the positions of the parties involved. However, it is because of this diversity that any analysis of the influence of EU policy on the spatial planning system must be inductive and open. The next section describes the research questions and methodology used to explore the influence of EU policies on Dutch planning.

1.4 Research question

This study investigates the influence of the EU on spatial planning in a broad context, namely all three aspects of spatial planning as presented in Section 1.3.1. With this in mind, the following research question and sub-questions were defined.
How, and to what extent, is EU policy responsible for changes in Dutch spatial planning?

1) What influence does the EU have on *governance* in the Dutch spatial planning system?
   i) How does the EU, as a new layer of governance, change governance relationships at the national level?
   ii) How do Dutch actors in the spatial domain attempt to influence EU policy?
   iii) Which EU policies result in new governance constructions?
   iv) Which changes in spatial planning governance are taking place in the Netherlands and how does this change the influence of the EU?
2) What influence does the EU have on the *content* of the Dutch spatial planning system?

i) Which EU policies require zoning in the Netherlands?
ii) Which EU policies require measures to be taken in the spatial domain?
iii) Which EU policies influence spatial planning through investment?
iv) To what extent do EU policies overlap and/or conflict?

3) What influence does the EU have on the Dutch spatial planning *process and system*?
i) What is the relationship between spatial planning decisions and sectoral objectives?
ii) Which factors determine the strength of this relationship?
iii) Which strategies are used to manage EU impact?

1.5 Methodology

Rather than exploring every EU policy in detail for its potential impact, a decision was made to investigate three broad themes in this exploratory study, which conform to the three aspects of spatial planning as defined above. Each of these sub-studies has its own focus and approach and is briefly described below.

1.5.1 Multilevel governance

The arrival of the European Union has created a 'fourth layer of governance' in the Netherlands. Policy formulated at the EU level can affect the Member States through the national spatial planning system. The institutional setting also continues to change, as do the policies themselves – a factor which needs to be borne in mind when investigating impact on governance. At the same time, the national government is transferring spatial planning responsibilities to provincial or municipal authorities, including tasks relating to EU policy. In addition, it has decentralised the responsibility for achieving EU policy objectives. This has consequences for the division of roles in the spatial planning system and for the way in which provinces and municipalities respond to EU policy. In cases like renewable energy, the national government has taken a more active role. The tension between decentralisation within the Netherlands and centralisation at the EU level has implications for the national government with respect to its stated responsibility for the spatial planning system. Additional perspective is gained by comparing the Dutch case with the situation in Denmark, where radical institutional reform has had far-reaching consequences for the spatial planning system.

1.5.2 Spatial planning and coordination

Although most EU sectoral policy 'interests' are not actually spatial in their definition, they can often be placed on a map. This is because achieving these interests, for example, requires certain areas to be given a special status, which may prohibit certain activities or developments. Areas in which measures need to be taken to meet a certain target can also theoretically be placed on a map, as can areas that receive EU funding. There is however no mechanism, such as a spatial vision, for coordinating these interests at the EU level. If several conflicting EU policies converge in the same location, this can have unexpected or undesirable effects. There are, for example, clear tensions between CAP subsidies, nature conservation and water quality, but also between regional and competition policy. The situation in Hungary is discussed by way of comparison since various uncoordinated EU policies converge along the Danube.

1.5.3 Process and system

Not all spatially relevant EU policy is implemented through the spatial planning system. Depending on the type of policy, a decision is made to link, or couple, sectoral policy objectives and the spatial planning system. Strong coupling can be regarded as problematic (too inflexible or insufficient latitude, as with air policy), but a lack of coupling can present a missed opportunity for achieving policy objectives. By actively managing this coupling, the right balance can be found between achieving sectoral policy objectives and spatial planning objectives. Examples of such management are programmes that ensure that not every project needs to be checked separately for compliance, as well as implementing a nature policy where protection of species is less area-specific. The Dutch situation is compared with the German spatial planning system, in which sectoral and integrated spatial planning exist alongside one another.

1.6 Structure of the report

The following three chapters describe the three sub-studies of this research. Each chapter includes a case study from a certain Member State, putting the Dutch situation into perspective.

Notes

1 That is, 15.5% for the United Kingdom, 14% for Denmark, 10.6% for Austria, 3% to 27% for France, 1% to 24% for Finland and 39% for Germany (Exadaktylos and Radaelli, 2012).
2 Policy files are defined by the authors as a group of decisions and/or activities serving a specific goal and taken and performed by or within the apparatus of a government, for example a spatial plan (Fleurke and Willemse, 2006: 93).

Multilevel governance

The arrival of a 'fourth layer of governance' has altered governance relationships in the Netherlands, including those relevant to spatial planning. As there is no specific EU spatial planning policy, the EU's influence is fragmented and differs from one policy area to the next. This influence changes as EU institutions change and policies evolve. The activities of Dutch actors (e.g. the House of the Dutch Provinces, Euro MPs and national representatives) in Brussels may also affect planning governance. Moreover, changes in governance within the Netherlands (e.g. decentralisation of spatial policy, reforms, budgetary cuts, administrative restructuring and the transfer of risk) also determine the influence of EU policy. To put the Dutch situation in perspective, it is compared with multilevel governance and spatial planning in Denmark. Although there are many similarities between the two countries, Denmark has taken a very different approach to EU policy-making.

2.1 A fourth layer of governance

Although the popular media is rife with cries about a loss of sovereignty to the 'Brussels super state', the development of an EU layer of governance through an ongoing process of political, economic and legal integration is already a done deal. As the Dutch Council for Public Administration recently wrote: 'For municipalities and provinces, Europe signifies a new governance reality, the importance of which cannot be overestimated [...] because whether you see Europe as the solution or the problem, one thing is certain: Europe is a fact of life' (Rob, 2013: 3). The effect of this 'fact of life' on governance relationships in the spatial planning system comprises the focus of this chapter.

Before starting, it is first important to properly define what the 'EU level' is. Faludi and Waterhout (2002: 21) noted that: 'Although not a state (not even a nascent one), the EU/EC still has institutions that perform state-like functions and work towards integration.' The EU exerts influence on all kinds of governance relationships within the Member States. For the Netherlands, it can be viewed as a fourth layer of governance (as opposed to government).[1] The effect of EU political and policy processes on the various government authorities, departments and national and international interest groups has long been a subject of study. A vast amount of research was conducted into multilevel governance in the years following the Maastricht Treaty, a period that the increasing importance of the region and the erosion of the nation state also became topical (Sharpe, 1993; Hooghe and Marks, 2001). More recently, there has been a renewed focus on multilevel governance, due to the expansion of the EU, decentralisation within the Member States and the consequences of the Lisbon Treaty for regions in general (Ladrech, 2010; Hooghe et al., 2010; Mandrino, 2008) and the policy concept 'territorial cohesion' in particular (Faludi, 2010; Dühr et al., 2010). These studies add nuance to the literature on EU impact, as this turns out to depend very much on the (changing) institutional setting in the Member State concerned (Featherstone and Radaelli, 2003; Pitschel and Bauer, 2009; Møller Sousa, 2008). For example, the implementation of the structural funds in the Netherlands and Denmark was not found to cause any significant changes in public administration (Yesilkagit and Blom-Hansen, 2007), while this is most certainly the case in other Member States.

In the public administration literature, the institutional arena that has developed at the EU level is usually called the European Administrative Space (EAS). Many studies examine how the EAS develops over time, particularly the evolving role of the European Commission (EC) as the focal point of this development. It was recently found that people who work in the EC, including seconded national experts, have a weak relationship and little contact with their national governments (Trondal and Peters, 2012). Also, the autonomy of the EAS (in relation to the Member States) increases with increasing institutional capacity at the EU level. The EAS has a homogenising effect on national institutions as they are all affected by the same or similar rules, and because they all take part in the EU decision-making process. It is therefore possible to talk of a certain convergence in governance systems in Europe (Knill, 2001) and the emergence of a network of government organisations at various levels that work together in certain policy areas (Hofmann and Turk, 2006, in Trondal and Peters, 2012).

That the EAS exists as an entity does not however imply that it is unified. In fact, fragmentation is endemic even within the 'most European' of EU all institutions, the

Housing market reform negotiations

The actions of the European Commission (DG Competition) in the case of the Dutch housing market may give the initial impression of a unilateral, top-down approach. Indeed, Dutch housing corporations were forced to drastically reform their operations in 2011 (Het Financieele Dagblad, 2010). The malfunctioning of the Dutch housing market continued to be an issue after the introduction of the national stability and reform programme. An advisory report published in 2012 recommended far-reaching housing market reform (CEC, 2012a) on sensitive political issues, such as the abolition of mortgage interest relief and the liberalisation of the subsidised rental housing market. Although a number of these recommendations were included in the National Reform Programme (drawn up by the then Dutch Ministry of Economic Affairs, Agriculture and Innovation), the European Commission noted a year later that the measures did not go far enough (CEC, 2013a).

Behind the apparent top-down hierarchy, however, extensive consultation took place between the European Commission and the Dutch Ministry of the Interior and Kingdom Relations. The final recommendations serve both interests. On the one hand, the EC did not want to lose face by demanding a level of reform that would be unattainable. On the other hand, national civil servants realised that it is necessary to break through national political taboos, and that the EU can be used to raise unpopular issues (Van Dedem, 2013).

Commission: 'research suggests that internal integration of the Commission does not seem to profoundly penetrate the services. [...] A portfolio logic seems to be overwhelmingly present in the policy DGs. [...] This observation echoes images of the Commission administration as fragmented with weak capacities for hierarchical steering, accompanying inter-service "turf wars" that is marginally compensated by presidential control and administrative integration' (Trondal and Peters, 2012: 6–7). Given that spatial planning is a very broad policy area without its own EU Directorate-General (DG), this institutional fragmentation is an important factor determining the influence of EU policy on spatial planning governance.

This chapter explores how multilevel governance affects spatial planning in the Netherlands. First of all, a description is given of the EU bodies that have the most influence on spatial planning, followed by a brief introduction of a few policy areas that have, or will have, an impact on the spatial domain. Each EU policy area has its own policy development pathway, its own governance system and, therefore, its own influence on planning. The second part of this chapter deals with governance at the national level in the Netherlands. The many domestic developments in and around planning (such as decentralisation) have had a clear effect on multilevel governance. The Dutch situation is then put into perspective by comparing it with multilevel governance and spatial planning in Denmark.

2.1.1 The European field of influence and spatial planning

Because not all of the EAS is relevant to Dutch spatial planning, this section only treats the most important parts. As the original (Dutch) version of this study was concluded in early 2014, some information required updating. Even though much of the information is now current, some parts of this section could still be outdated.

European Commission

The executive body of the EU, the European Commission (EC), is arguably the most 'European' of EU institutions. Each Member State supplies a commissioner who swears an oath to represent the interests of Europe as a whole and not that of his or her own Member State. The EC is the only body that may make new policy proposals, and is also responsible for ensuring that policy is implemented properly. In 2014, there were 33 DGs and a coordinating Secretariat-General. Because the EC is organised by field of expertise, the DGs form a logical point of contact for the various policy areas. As described above, coordination within the EC is rather loose, to say the least, with DGs primarily focusing on their own tasks. The EC does however produce an annual summary of priorities, called a work programme (CEC, 2013c).

Since the EU Treaty does not provide a clear mandate for EU intervention in spatial planning, it is not surprising that no spatial planning DG exists,[2] or will exist in the foreseeable future. The most relevant DGs that propose new legislation that can affect spatial planning in the Member States and that can enforce existing policy are briefly described below. The main policy processes are described for each DG in accordance with the framework set out in Chapter 1 (rules, incentives, arena):

– *Regional and Urban Policy (REGIO).* This DG is historically the most involved in spatial policy development at the EU level. It played an active role in developing the European Spatial Development Perspective (ESDP) in 1999 and the ESPON programme. Even so, the policy focus of this DG is territorial rather than spatial.[3]

Table 2.1
European Commission Directorates-General according to relevance to spatial planning

Directorates with a strong link to spatial planning (relevant)	Regional and Urban Policy (REGIO), Environment (ENV), Agriculture and Rural Development (AGRI), Competition (COMP), Mobility and Transport (MOVE), Maritime Affairs and Fisheries (MARE), Climate Action (CLIMA), Energy (ENER)
General Directorates (possibly relevant)	Eurostat (ESTAT), Joint Research Centre (JRC), Secretariat-General (SG)
Directorates with a weak/no link to spatial planning (not relevant)	Budget (BUDG), Communication (COMM), Communications Networks, Content and Technology (CNECT), Economic and Financial Affairs (ECFIN), Education and Culture (EAC), Employment, Social Affairs and Inclusion (EMPL), Enlargement (ELARG), Enterprise Internal Market, Industry, Entrepreneurship and SMEs (GROW), International Cooperation and Development (DEVCO), Health and Food Safety (SANTE), Migration and Home Affairs (HOME), Humanitarian Aid and Civil Protection (ECHO), Human Resources and Security (HR), Informatics (DIGIT), Financial Stability, Financial Services and Capital Markets Union (DG FISMA), Interpretation (SCIC), Justice and Consumers (JUST), Research and Innovation (RTD), Service for Foreign Policy Instruments (FPI), Taxation and Customs Union (TAXUD), Trade (TRADE), Translation (DGT)

Source: European Commission website, accessed 1 February 2016.

In the Dutch context, this DG is more akin to the Ministry of Economic Affairs (EZ) than the Ministry of Infrastructure and the Environment (IenM), as it focuses primarily on regional economic development (the structural funds are administered via the Ministry of EZ in the Netherlands). DG Regio focuses on the sub-national level. In the Netherlands, provinces are responsible for drawing up the operational programmes to disburse the allocated funds. This DG has been paying increasing attention to cities, and an 'Urban Agenda' is in the works (CEC, 2014a). In addition to the ESPON programme, DG Regio also funds the Urban Audit. DG Regio policy mainly takes the form of subsidies (incentives), information or fora (arena).

- *Environment (ENV).* This DG is responsible for policy proposals that are highly relevant to spatial planning, both in terms of content and process. It also monitors the implementation of nature and environment legislation in the Member States and takes legal steps in cases of non-compliance. There are some limited subsidies available via the Life+ programme. Dutch sub-national authorities have less contact with this DG than with DG Regio. The European Environment Agency in Copenhagen plays a crucial role in developing the expertise on which policy proposals are based. These usually take the form of legislation (mainly directives) that sets clear targets but does not dictate how these are to be achieved.
- *Agriculture and Rural Development (AGRI).* Although the Common Agricultural Policy (CAP) has had a tremendous impact on land use, it has almost no influence on spatial planning. The first pillar of the CAP (income support to farmers) is spatially blind. The effects of the CAP on spatial planning are indirect and weak but still considerable in terms of the CAP's physical footprint. The second pillar (rural development) is more modest in terms of funding but much more relevant to spatial planning, as it is place-based and engages sub-national authorities (provinces) for implementation. DG Agri policy mainly takes the form of subsidies.
- *Competition (COMP).* The aim of this DG is to create a level playing field and ensure equal market access. Theoretically speaking, this has little to do with spatial planning, so when it does affect spatial development, this usually comes as a surprise. Planners are 'caught unawares' by questions from the EC on, for example, state aid to housing corporations, out-of-town retail policy, land transactions or public procurement procedures. DG Comp often works with regulations (which are applied directly in all Member States), or directives.
- *Mobility and Transport (MOVE).* Most EU transport policy is not highly spatial in nature, focusing instead on traffic and transport regulations. The Trans-European Networks (TENs) policy is an exception, as it designates priority infrastructure projects. DG Move policy takes the form of subsidies – either through the Structural Funds or a modest TENs budget (incentives) – and by conferring symbolic value by identifying EU priority projects (arena).
- *Maritime Affairs and Fisheries (MARE).* Although the physical territory of DG Mare falls outside that of traditional spatial planning, there is some interesting overlap. The Maritime Spatial Planning directive (CEC, 2013d) will take effect in September 2016 and could serve as an example for spatial planning on land (arena). In the Netherlands, the fisheries policy also affects the economic development of fishing villages and other land-based activities.

Council of the European Union

The Council of the European Union (also called Council of Ministers or EU Council) should not be confused with the Council of Europe (which includes 47 Member States, is not an EU institution and has only advisory capacity) or the European Council (which is composed of the heads of state of the Member States). Together, the EU Council and the European Parliament (EP) hold the legislative power within the European Union. The EU Council is made up of Member State (and in some cases federal state) ministers or their representatives, and consists of 10 substantive 'configurations', which overlap to a certain extent with those of the Commission. Like the Commission, the EU Council has no configuration for spatial policy, and not even one for regional policy. There is, however, an informal gathering of ministers for spatial planning and territorial cohesion which draws up non-binding agreements and discusses territorial issues. This has resulted, for example, in the Territorial Agenda; a manifesto that calls for a continued focus on the spatial dimension (Hungarian Presidency, 2011).

As EU Council members each represent their own country, national interests often take the front seat in negotiations. Federal states such as Belgium, Austria and Germany are also represented in the Council by sub-national authorities, while less decentralised countries such as Denmark and the Netherlands have only a national representative (Mastenbroek et al., 2013: 45).

Although the EU Council used to be the most important institution in the EU decision-making process, the number of policy areas over which the Council has exclusive authority has steadily decreased. Furthermore, since the expansion of the EU in 2004, it has become almost impossible to conduct a proper debate in the EU Council. Even though people may now only speak for a maximum of four minutes, it still takes hours for all the ministers to have their say (Van Keulen, 2007). For this reason, negotiation now takes place within working groups during the weekly meetings between the Permanent Representatives of the Member States. The result is then presented to the EU Council as a formality (Van Schendelen, 2013: 18).

European Parliament

Before the Maastricht Treaty, the European Parliament (EP), which consists of directly elected members, had only an advisory role. Now it holds real legislative power alongside the EU Council and is amassing power in more and more policy areas. The Lisbon Treaty (2009) granted the EP control of the CAP, which had long been outside its reach. Very few (and increasingly fewer) legislative proposals now take place without involvement of the EP (Møller Sousa, 2008).

The EP is so large that it has been divided into a number of functional standing committees (22 in 2015), each consisting of 40 to 60 members. These committees assess EC policy proposals (approve, reject or suggest amendments) under the leadership of a rapporteur, who prepares a report. Other political groups may appoint a shadow rapporteur to present an alternative view (Versluis, 2007). Various functional standing committees are relevant to spatial planning and, unlike in the EU Council, there is one for regional development.

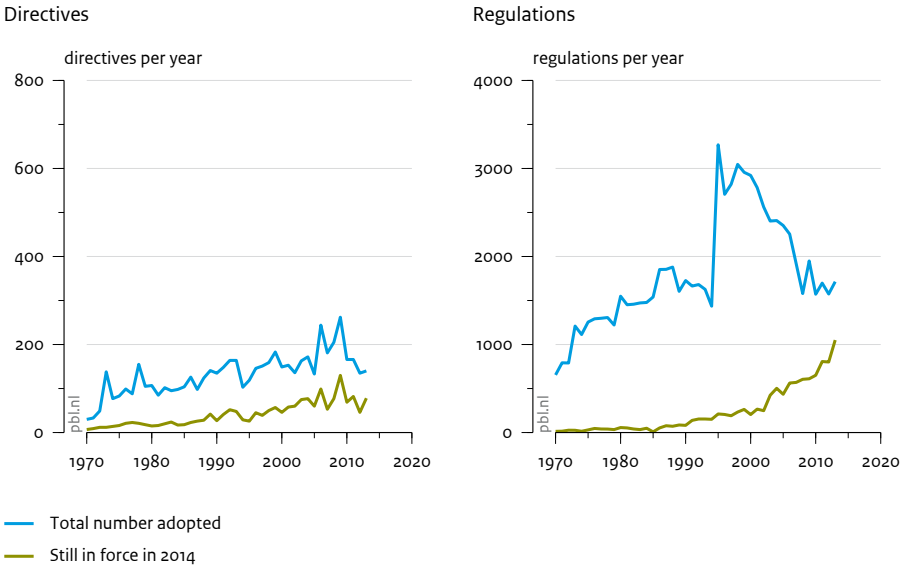
Although the decision-making process within the EP is party-political, nationality also plays a role. For example, the Dutch provinces are more likely to approach Dutch Euro MPs than their foreign colleagues. A Dutch rapporteur or shadow rapporteur is therefore regarded as an important link in the policy development process (Mastenbroek et al., 2013). Dutch MEP Lambert van Nistelrooij (CDA), for example, has been spearheading territorial cohesion within the committee for regional development.

Miscellaneous

In addition to the formal institutions of the EU responsible for decision-making, there are many other bodies active in Brussels in various capacities. In some cases, these play a part within the formal decision-making process. One example is the trialogue, consisting of informal meetings between the EC, the EU Council (who chairs) and representatives of the EP in which ongoing and future policy proposals are discussed. This trialogue takes place roughly once a week.

There are many parties that try to influence the decision-making process from outside. In 2008, a lobby register was set up to keep track of all these parties. In 2012, the list contained over 5000 names and does not include governments, since these are exempt from registration (Van Schendelen, 2013: 20). When it comes to multilevel governance, the presence of sub-national government authorities in Brussels is important; the House of the Dutch Provinces has had an office in Brussels since 2000, and the four big cities (G4) since 2003. An important partner is the Committee of the Regions (CoR), which consists of 353 regional and local representatives from the 28 Member States and produces non-binding recommendations. As elsewhere in the EAS, there is no separate spatial planning department, but there are committees that deal with related areas, such as environment and transport. Since the Lisbon Treaty, the CoR also has the right to appeal decisions made in policy areas in which it is entitled to make recommendations (Rob, 2013: 19).

Figure 2.1
Number of adopted EU directives and regulations



Source: EUR-Lex 2014

Various countries in Europe, including the Netherlands, are undergoing a process of decentralisation and/or federalisation, and the collective power of the sub-national authorities will probably increase as these seek European allies or begin to cooperate at the EU level. A result could be further Europeanisation. After all, 'many of these "regional" delegations will call for more European solutions rather than solutions at the Member State level' (Dutch Council of State, 2013: 67).

2.1.2 Governance and the influence of EU policy

EU policy-making involves complex negotiations between many different countries that are often themselves internally divided and this tends to produce lengthy and sometimes convoluted arrangements. EU policy also needs to keep up with changing circumstances and new social issues, so continual adjustments are also necessary. Due to the volume of legislation, the EU is sometimes derided as a red-tape factory. However, it is difficult to say how many new rules are being made. A study of the online legal database EUR-lex shows a steady increase in the total number of regulations, directives and decisions, with a grand total of 37,732 at the start of 2014.

A number of observations can be made from the annual legislative output of the EU displayed in Figure 2.1. Firstly, the number of new directives – the most important in terms of spatial planning – did increase until the 1990s, but has remained relatively stable since. Secondly, the number of new regulations increased dramatically following the creation of the EU (the Maastricht Treaty), but then decreased just as dramatically. Thirdly, the number of decisions (not shown) shows a similar pattern to the directives. It should be noted that many new rules are in fact amendments, consolidations or repeals of previous ones. This applies to about half of all directives passed since the 1990s. It is therefore simply untrue that more rules mean more bureaucracy; the new rules can in fact simplify the existing system. Furthermore, in the case of directives, the regulatory burden has just as much to do with the method of implementation and whether or not extra rules or gold-plating are added.

Another way of assessing the degree of Europeanisation of national legislation is to compare the number of EU laws to the number of national laws. In the case of competitiveness policy, for example, a clear Europeanisation trend can be seen in the Netherlands; whereas the percentage of EU legislation in the Netherlands remained stable at about 10% until the mid 1990s, it steadily increased to almost 50% by 2010 (Kaufmann and Witteloostuijn, 2012: 281).

What does this say about the relative influence of the EU on Dutch spatial planning? The net accumulation of rules actually says very little, as impact depends strongly on the development pathway within the most relevant policy areas. Given the fragmentation of the EAS, policies may become more relaxed, integrated, distinct and strict, all at the same time. To explore this matter further, the remainder of this section will examine current developments within a number of spatially relevant

policy areas, before turning to how these affect governance relationships.

Current developments within spatially relevant policy areas

The influence of EU policy on Dutch spatial planning is steadily increasing, in part due to the continued development of various policy areas. There are different stages of policy development. For very mature policy areas, the focus is sometimes no longer on devising new rules but on ensuring compliance with existing ones. In other areas, policy development is still at a very early stage (e.g. the expert group stage, in which experts discuss possible policy with the EC). For other areas, a Green Paper sketches the contours of possible policy, and for yet others policy objectives are described in a White Paper. In some cases, a legislative proposal has already been drawn up, for example for a directive. Each year, the EC publishes a summary of proposals in its work programme. The following summary of spatially relevant policy developments is based on the work programmes for 2014–2016 and on other sources.

- The 2014–2020 *regional policy* period has begun. Its total budget is lower than that for the previous period (183.3 billion euros compared with 201 billion euros), and the share for the Netherlands is significantly lower as well (500 million euros compared with 830 million euros). It was already clear in the Fifth Cohesion Report (CEC, 2010a) that regional policy was broadening its scope. More attention is now being paid to sustainability and urban areas.[4] The structural funds target the objectives of the ten-year strategy, 'Europe 2020', on smart, sustainable and inclusive growth.
- With regard to *transport policy*, the EC implemented a number of policy packages in 2014. The fourth railway package includes proposals for directives and regulations that will contribute to the further standardisation and liberalisation of the passenger transport market. These proposals aim to complete the 'single European railway area' (CEC, 2013c). Another spatially relevant proposal concerns port services (CEC, 2015a).
- EU *environmental policy* continues to develop and influence spatial planning. Under the Irish presidency (2012), the EU reached an agreement on the Seventh Environment Action Programme in which environmental policy was framed as a means of ending the economic crisis.[5] Sustainable land use, water management and resilient ecosystems have gained prominence in the new Environment Action Programme and spatial planning is increasingly regarded as a means to achieve environmental objectives. A proposal for stricter emission ceilings in the NEC Directive was criticised by the Dutch Federation of Agriculture and Horticulture due to the expected impact on livestock farming (press release, LTO Nederland, 18 Dec. 2013), and is now being reviewed (CEC, 2015a). On the other hand, the soils directive was abandoned due to opposition from several Member States, including the Netherlands (CEC, 2013c). The regulation on noise-related operating restrictions at EU airports, adopted in 2014, will take effect in June 2016. Finally, a new initiative in the 2016 work programme is the Circular Economy Package, which could entail a link with spatial planning (CEC, 2015a).
- Regarding *nature policy*, the latest EU biodiversity strategy (CEC, 2011a) included very few additional ambitions compared with its predecessor, focusing mainly on the completion of the Natura 2000 network. A 'fitness check' of Natura 2000 is being conducted and is scheduled for publication in 2016 (CEC, 2014b). On the other hand, the new concept of 'green infrastructure' could be very relevant for spatial planning, as it required the development of a joint analytical framework for mapping and assessing ecosystem services (CEC, 2013e). The biodiversity strategy also aims to recover at least 15% of degraded ecosystems (designated by Member States), which is also likely to affect spatial development.
- *Energy and climate policy* presented the spatial planning system with new challenges. The EU would like to introduce an emissions trading system for the aviation sector before 2020 (CEC, 2013c) and, in 2014, presented a new initiative for climate and energy policy for after 2030. The new energy directive could have consequences for the spatial planning system, certainly with regard to biomass and biofuels (Van Hoorn et al., 2010), but also wind energy (Van Hoorn and Matthijsen, 2013). The Strategic Framework for the Energy Union, a new initiative in 2015, should heighten ambitions and strengthen international cooperation towards the energy transition and, ultimately, call on spatial planning to facilitate this (CEC, 2014b).
- A major reform in the *common agricultural policy* is also underway. Although the two pillars of the CAP (agricultural production and rural development) remain, significant changes are being made within these pillars. As far as the first pillar is concerned, the intention was to replace the historical model of subsidies based on past production with one based on the number of hectares of agricultural land. A new allocation framework is being drawn up with 2014 as a reference date. One reason for this was to correct for the fact that farmers in the richest Member States were receiving higher subsidies than those in eastern and central Europe (CEC, 2013f). This reform therefore serves to reduce inconsistency between CAP and

Table 2.2
Multilevel governance and EU subsidies

Level	EU subsidies								
	Agricultural policy			Regional policy				Nature	R&D
	P1	P2: EAFRD	P2: Leader	ERDF	Interreg A+B	Interreg C	Urbact	Life+	FP7
European Union									
Transnational									
Partnership									
National									
District									
Province									
Region/Water Board									
Municipality									
Local parties									

Red = decision-making power, Green = possible beneficiary

Source: author, based on various sources (mainly EC websites and the Association of Dutch Municipalities).

regional policy (see also Chapter 3). An increased focus on sustainability issues may reduce conflicts with environmental policy as well. The EC also aimed to reform organic agricultural policy in 2014 (CEC, 2013c).

– Changes were also taking place in EU *competitiveness policy*. In 2012, the EC published recommendations (CEC, 2012a) for the Dutch housing market (e.g. to end mortgage interest relief and liberalise the rental housing market). Not all of these recommendations were taken on board, so this issue may remain (CEC, 2013a). In addition, a dispute in Spain regarding hypermarket development has brought retail planning policy in Member States to the attention of the EC. The former DG Markt developed an action plan on retail (CEC, 2013b), which included an investigation into the extent spatial planning prevents the free establishment of retail outlets (CEC, 2013b: 9–10). The 2016 work programme also seeks to expand free trade by means of the TTIP and WTO negotiations. In addition, both state aid and public procurement policies are being examined for potential simplification.

2.1.3 Influence of EU policy on governance

The ongoing development of EU policies makes it necessary for Member States to continually implement changes in all types of organisations and procedures, including those pertaining to spatial planning. In some cases, this adjustment is mandated by the EU (e.g. an Environmental Impact Assessment or public procurement procedure). In other cases, Member States make a conscious and voluntary choice to adopt the EU framework in order to reduce transaction costs. According to Knill (2001): 'Policy content and administrative implementation requirements are often closely related. While being aware of the fact that the degree to which policy contents and administrative implications are coupled may vary from policy to policy and from sector to sector, it cannot be ignored that the growing importance of European policies leaves its mark on domestic administrations' (Knill, 2001: 1). This systemic adjustment is one form of Europeanisation. The sections to follow will look into this matter in more detail.

Governance and subsidies

The various EU subsidy schemes have set up different implementation regimes, which produce various effects on governance (Rob, 2013). In some cases, the EU determines both the framework and the recipients (Horizon 2020), while other policies (European Regional Development Fund (ERDF)) allow for much more local interpretation and decision-making. Some policy areas apply to narrow target groups (e.g. the CAP), while others may involve a wide range of stakeholders (e.g. Life+). These differences have obvious consequences for the relationships between the various actors. In some cases of regional policy, for example, Dutch provinces are both administrators and beneficiaries of EU funding. The co-financing requirement also affects relationships between government authorities; for example, municipalities may lobby the national government or the province to co-finance ERDF subsidies. Furthermore, international cooperation is also often required to be eligible for funding (e.g. Horizon 2020, Interreg), which can also affect governance relationships by bringing in new actors. Because each Member State is obliged to implement the same policy, a certain level of convergence in governance has been observed in Europe, in other words Europeanisation (Börzel, 2002). This does not necessarily result in dramatic systemic changes, as EU policy can sometimes be incorporated into the existing organisational structure (Yesilkagit and Blom-Hansen, 2007).

A brief comparison of the two largest EU budgetary expenditures (pillar 1 of the CAP and the ERDF within regional policy) illustrates the difference in governance between subsidy schemes. Pillar 1 of the CAP involves direct payments to farmers. Because the EU aims to ensure a level playing field, the CAP is implemented by means of EU regulations wherever possible, with little national or regional input. The Dutch Ministry of EZ, therefore, mainly acts as a conduit, and the provinces and municipalities play almost no role whatsoever. This means that discussions taking place at the EU level regarding CAP pillar 1 reforms are highly relevant, and stakeholders should focus their lobbying efforts at that level.

Governance for the ERDF is very different. Although these subsidies are also provided via a regulation, this regulation is much broader than that for the CAP, both in terms of content – it may relate to all kinds of investments that strengthen a regional economy – and beneficiaries. The main objectives of the ERDF are set out in a National Strategic Reference Framework, but policy is actually implemented on a regional level. It is at this level that the multiannual operational programmes are drawn up which are used to evaluate individual subsidy requests. All kinds of organisations can apply for ERDF funding for their projects; businesses, universities, public organisations, municipalities and provinces. The type of project can also vary, from million-euro investments in innovation or infrastructure to modest support for small initiatives like a neighbourhood centre. Compared with the CAP (pillar 1), ERDF governance is much more bottom-up and diffuse.

Governance and legislation

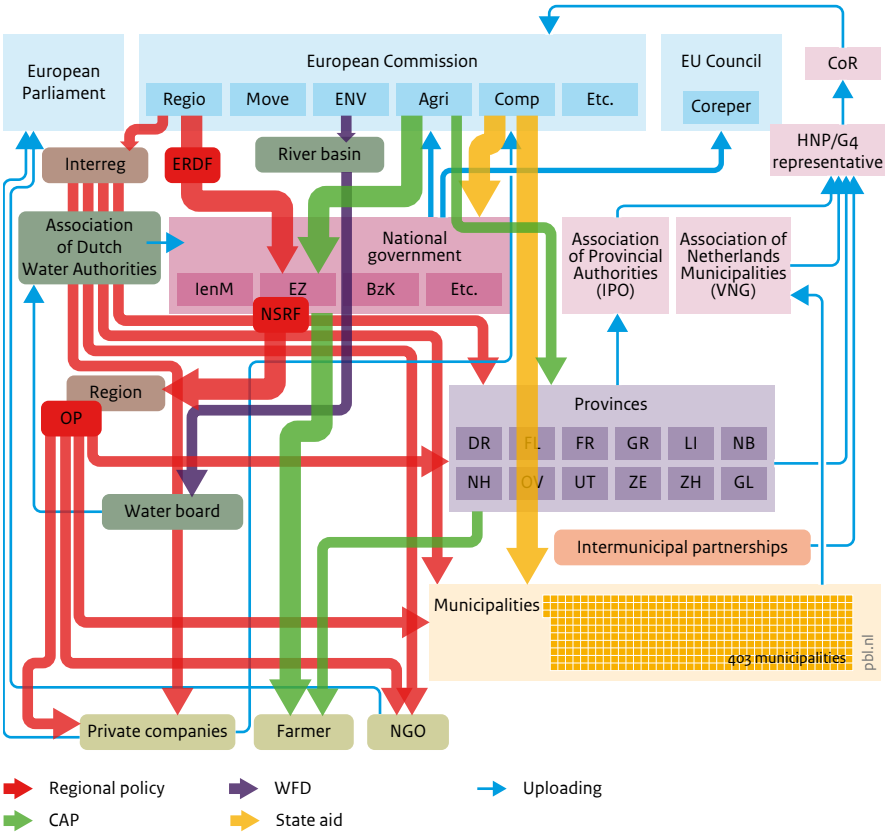
The decision-making and implementation processes relating to EU legislation have important implications for governance, both in the way EU policy affects governance relationships in the Member States (*downloading*), and how stakeholders interact in order to influence EU policy development (*uploading*). As in the case of subsidies, legislation can mandate cooperation (Water Framework Directive) or prohibit it (public procurement). Some legislation, such as regulations that directly apply in all Member States, is top down and leaves little room for interpretation. Others provide more latitude, such as directives that are transposed into national legislation. Directives, and especially framework directives, are an interesting case in relation to governance. Not only do the various stakeholders affected by the directive within a Member State interact in the implementation, but during policy development Member States interact with other stakeholders (such as other Member States) and EU institutions.

The governance impacts can be discerned at every step of the policy process. At an early stage, national actors can try to exert influence on the policy making process by putting a certain item on the EU agenda and framing it in a certain way (or, alternatively, by preventing an item from being placed on the agenda). This is sometimes called the 'expert group stage' because discussions often take place with experts, the 'commission stage' because the EC is involved, or the 'development stage' because it is during this stage that policy is developed (Tennekes and Hornis, 2008; Rob, 2013). If there is sufficient support for new policy, the EC draws up a concrete proposal. Once this happens, different actors become involved in the process and the nature of governance changes: it becomes more formal and political.

Over the years, an official protocol has been developed in the Netherlands for handling EC proposals (Rob, 2013). Under this protocol, the Permanent Representative in Brussels forwards each new EC proposal to an interdepartmental Working Group for the Assessment of New Commission Proposals. The Ministry of Foreign Affairs chairs this working group, which since 2001 includes sub-national authorities as well as ministries. The first task of the working group is to assign a ministry to be responsible for the proposal. The civil servants from the relevant ministries are primarily charged with assessing the proposal and formulating a national position in the EU Council (Bovens and Yesilkagit, 2010). In the case of complicated, multisectoral issues, the Dutch position is discussed in an interdepartmental coordinating committee (CoCo).

If the proposal is adopted, it either takes immediate effect (regulation) or is transposed into national legislation (directive). There is no standard procedure in the Netherlands for transposing directives; new procedures are drawn up on a case-by-case basis. Sometimes a new law is enacted, sometimes an existing law is adapted, and sometimes a directive is transposed through an Order in Council (*Algemene Maatregel van Bestuur*, AMvB). Whatever the case, the responsible ministries must report monthly to the national government on the progress being made regarding implementation. When it comes to the amount of time taken to transpose directives, the Netherlands is not 'top of the class' but fairly average (Haverland et al., 2011). Interestingly, directives involving several ministries are not implemented more slowly or poorly than directives involving only one ministry, but transposition through an AMvB rather than a legislative procedure does appear to improve the likelihood of timely implementation (Haverland et al., 2011). Because of this, the national government has repeatedly proposed implementing EU

Figure 2.2
Complexity of multilevel governance



Source: PBL

Budgetary discipline and the Sustainable Public Finances Bill

The implementation of the Fiscal Compact on budgetary discipline, signed by 25 Member States (including the Netherlands) in March 2012, has impacted domestic governance. The Dutch implemented the Fiscal Compact via the Sustainable Public Finances Act (*Wet Houdbare Overheidsfinanciën*, the 'Hof Act'). As early as 2004, a decision had already been made that the 3% budgetary deficit rule would be divided up among the governmental tiers, with a 2.5% deficit being allowed for national government and 0.5% for sub-national authorities. These percentages were subsequently written into the Hof Act, which sparked a great deal of criticism and strained governmental relations (Allers and Van Nijendaal, 2012; Binnenlands Bestuur, 27 July 2012: 18–21). This examples illustrates that although the Fiscal Compact can be said to have affected governance in the Netherlands, its impact was largely due to choices made at the national level.

directives only via AMvBs, but this idea is consistently rejected by the Dutch Parliament, which would be cut out of the loop.

This raises the issue of the role of domestic party politics in the EU policy-making process. A Finnish study concluded that it is very difficult, if not impossible, to untangle EU and national issues in this regard: 'Not only does an increasing share of matters formally decided at the national level have a European dimension, but also debates on EU laws or European level processes can be dominated by domestic issues' (Raunio and Wiberg, 2010: 89). As we have seen, the Dutch protocol for dealing with EC proposals is primarily a bureaucratic activity; Dutch party politics arrives rather late on the scene. Obviously, if parliaments can only provide input during the implementation phase, they can no longer influence EU policy development. Even though the Netherlands strives to introduce the widest possible margins for achieving targets when transposing EU directives into national legislation, there is in fact very little room for manoeuvre (De Boer et al., 2010) in this late stage. The comparison

with Denmark, at the end of this chapter, shows that the Dutch approach is just one of many, with its own advantages and disadvantages.

There are large differences between Member States as far as the implementation of directives is concerned (De Boer et al., 2010), and this can have important consequences for governance. For example, implementation can be used as a means for giving national policy EU force of law by including rules that go beyond that required by the directive (so-called gold-plating). The Fiscal Compact in the Netherlands is a case in point (see text box 'Budgetary discipline and the Sustainable Public Finances Bill').

The influence of the EU on governance relationships increases in complexity if policy *uploading* is taken into account. Different actors have different channels for influencing policy at their disposal. For example, provinces can contact the House of the Dutch Provinces in Brussels (and then to the Committee of the Regions or other EU organisations), while national government mainly promotes its interests through the Permanent Representation in the EU Council. Actors such as NGOs and enterprises may wish to approach EU institutions directly. In addition to using the right channels, it is also important to use the right means. Various publications exist to assist the Dutch find their way in Brussels (e.g. Kok et al., 2004), but political scientist Van Schendelen is rather derisive about the quality of Dutch lobbyists: 'Many see their demands as generous offers to Europe, thereby earning the reputation of being direct, loud and blunt. They often lobby semi-formally on a long-list with a free mandate, in short, as amateurs' (p. 155). The public sector is also not as involved as it could be, as measured by the 'ladder' of Europeanisation developed by British political scientist Peter John (2001). At present, 'policy uploading' is not a high priority for Dutch municipalities and provinces; the questions that Dutch sub-national authorities ask on the Europadecentraal.nl website largely concern compliance with regulations (lowest rung) or subsidies (low) and not the higher rungs of the ladder such as networking or lobbying (see table in Rob, 2013: 40). In other words, multilevel governance in the Netherlands focuses more on *downloading* than *uploading*.

The EU's influence on governance is even more complex if the changes taking place at the EU level, as discussed in the previous section, are taken into account. The formal powers of EU organisations are constantly evolving (e.g. agricultural policy is now also determined by the EP), as are the size and scope of these organisations (e.g. new DGs with each expansion of the EU and new members in the European Council and the EP) and various developments in certain policy areas. Looking back on the first edition of his book *The Art of Lobbying the European Union* (2013: 17), Van Schendelen writes in the latest edition: 'Trying to influence the EU in 2012 by using the "state of the art" tools and techniques of 2002 is almost guaranteed to be a failure.'

The vast differences between policy areas make it impossible to calculate the total effect of the EAS on governance. The Europeanisation literature is torn on basic questions such as whether the EU increases or decreases the autonomy of sub-national authorities. Studies that address regional policy mainly talk of a 'stimulating' Europe, as the structural funds are usually used to achieve regional objectives (e.g. Hooghe and Marks, 2001). However, from the point of view of environmental or competitiveness policy, Europe can clearly restrict local autonomy. An empirical study carried out on the Dutch province of Flevoland (Fleurke and Willemse, 2007) produced a very mixed picture (see Chapter 1). However, as Flevoland is no longer eligible for structural funds under the convergence objective, a shift in the stimulator–hindrance ratio is entirely possible (Van Ravesteyn and Evers, 2004). The finding that the impact of EU policy is mainly indirect (it travels through national and regional policies), on the other hand, is still valid: Europe therefore will remain largely 'unseen' at the local level (Fleurke and Willemse, 2007). Indirect impact not only obscures the influence of the EU but can even be a factor in that influence. This matter is addressed in more detail in the following section.

2.2 National developments

The EU's influence on Dutch spatial planning governance is, to a large extent, determined by existing and evolving governance relationships within the Netherlands. For example, the decision to delegate responsibility for EU policy implementation to provinces can mean that these policies are dealt with differently from province to province. Changes in the domestic legal system or policy priorities can also affect how EU policy impacts spatial planning. This section briefly recounts the far-reaching changes made to the Dutch spatial planning system (Van der Wouden et al., 2011; Zonneveld and Evers, 2013) and follows this up with a discussion of the how these reforms could affect the way EU policy impacts Dutch spatial planning.

Dutch planning has changed considerably since 2000. First of all, major reforms were made to the statutory planning system, the most important of which was the introduction of the Spatial Planning Act (*Wet ruimtelijke ordening*, Wro) in 2008. The Wro[6] replaced the hierarchy of the 1962 Spatial Planning Act (*Wet op de Ruimtelijke Ordening*, WRO) with a system in which each government

Table 2.3
Policy changes in the SVIR related to urbanisation

Policy category	National Spatial Strategy (2006)	SVIR (2012)
Urban areas	Densification policy Clustering policy Restrictive retail policy Urban networks	Sustainable urbanisation procedure
Rural areas	National landscapes Green space in and around cities National buffer zones National Ecological Network (EHS) with durable ecological pathways Concentration of intensive agriculture	National Ecological Network (NEN)

Source: IenM (2012: 108–113)

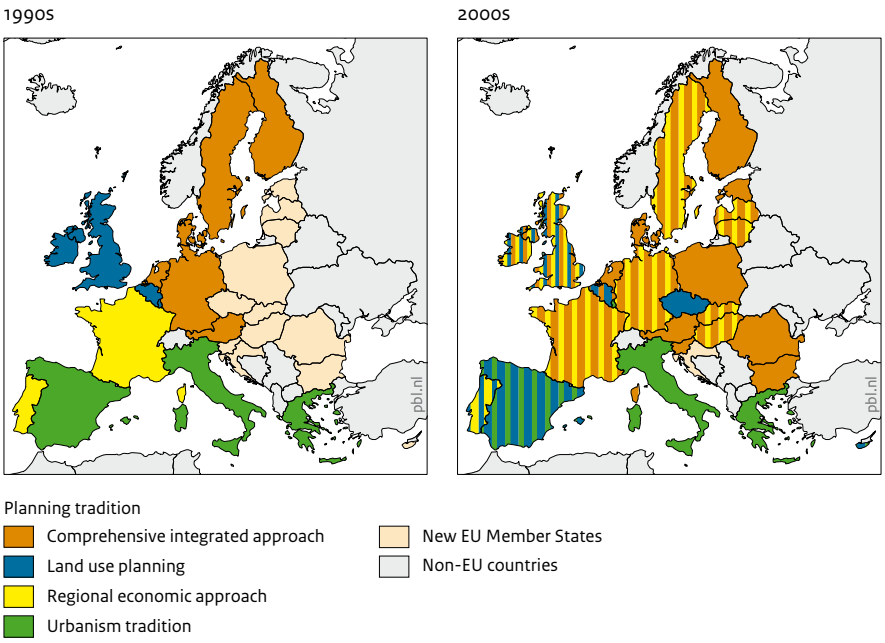
tier has access to the same legal instruments, including the local land-use plan. The emphasis on 'self-interest' (each territorial unit determines its own interests and acts accordingly to protect them) and proactive legislation (rules are drawn up in advance) represented a conceptual paradigm shift. Although the Wro signals the most important legislative change, it was certainly not the only one affecting the planning system.[7] Moreover, the spatial planning system is on the brink of another radical reform: Environment and Planning Act (*Omgevingswet*), planned to enter into force in 2018, will integrate all environmental, water and spatial legislation into a single law (Rli, 2012). With each change to the spatial planning system, the division of power between government authorities also changes, and, hence, so does governance.

Domestic politics has also affected spatial planning governance. To reduce the administrative burden, several governance principles were developed in the 2010 Government Agreement (CDA and VVD, 2010). The first relates to the 'self-interest' as formulated in the Wro: authorities must not interfere in matters where they have no defined interest. Despite its clarity, it is very difficult to apply this principle to broad policy areas such as spatial planning, which often try to coordinate multiple policy areas. The second principle, based on the same philosophy, is more specific: no more than two layers of government may work on any given matter at the same time. As with the first principle, this is also difficult to apply to the three-tiered system of spatial planning. If one were to count the EU as a fourth layer, this rule becomes even less practical. In line with its pledge to deregulate, the Dutch Government is working on removing national gold-plating. In 2013, for example, it drew up a list of gold-plating in the area of nature, agriculture and fisheries in response to questions posed in the House of Representatives.

Major changes have also occurred in the relationship between spatially relevant ministries, or in other words, in horizontal coordination. The traditional alliance between public housing and spatial planning has weakened over the years. Various factors contributed to this: a privatisation of housing associations, the completion of the national housing programme (i.e. the Dutch 'Vinex' agreements) and the transfer of the Department of Housing to the Ministry of the Interior and Kingdom Relations (BZK). As a result, the main aim of and justification for national spatial planning – to manage urbanisation – has become less self-evident (Van der Wouden et al., 2011). Furthermore, one of the most important spatial planning objectives – regional economic development – still falls under the responsibility of the Ministry of Economic Affairs, as do nature and agriculture. Since 2010, national spatial planning has been brought under the Ministry of Infrastructure and the Environment within a DG also responsible for water management. Finally, spatial planning has suffered a loss of in-house expertise since the research department was transferred to an independent planning agency[8] in 2002 and by various internal reorganisations (Roodbol-Mekkes et al., 2012).

Not only has horizontal coordination changed, but vertical coordination as well. Starting around 2000, a general trend can be seen towards decentralisation and deregulation of national planning. By 2010, the Government Agreement stated that, 'Supervision and management of spatial planning and housing will be transferred to the provinces' (VVD and CDA, 2010: 38). This goal was taken up in the National Policy Strategy on Infrastructure and Spatial Planning (SVIR). This document, which is the current national policy, states that: 'Excessive layers of government, complex regulations and compartmentalisation are all too common, and they have a detrimental effect on the development of the Netherlands. Central government intends to bring spatial planning decision-making closer to the stakeholders (individuals and companies), delegating more to local and provincial authorities

Figure 2.3
Changing spatial planning traditions in Europe



Source: CEC 1997; ESPON 2006

(decentralisation as the first option), and focusing more on users' (IenM, 2011: 4). The number of 'national interests' was slashed from 33 in the *Nota Ruimte* (National Spatial Strategy) and related documents to 13. All substantive national urbanisation policies were abolished and replaced by a single procedural rule: the sustainable urbanisation procedure (IenM, 2012).[9] The philosophy was summed up using the concept of 'system responsibility': the national government should ensure that the planning system functions well, but not necessarily what the planning system does in terms of content. This system responsibility comprises the 13th national interest of the SVIR.[10]

2.2.1 Influence on horizontal coordination

The Dutch spatial planning system is regarded as a classic example of the 'comprehensive integrated approach' (CEC, 1997; ESPON 2.3.2, 2007).[11] This approach consists of a hierarchical planning system (vertical coordination) competing land-use claims are balanced against each other (horizontal coordination) in an attempt to achieve coherence between sectoral policy areas (Van der Berg, 2012). In this process, Dutch planning eschews fixed standards and seeks instead to achieve synergy and, where that is not possible, compromise. The reforms described above call into question whether the Netherlands can still be held up as an exponent of the comprehensive integrated approach, at least at the national level.

The drastic reduction in the number of national interests in the SVIR means that the proportion of national spatial policy determined by the EU is relatively larger. More and more, national spatial policy is defined by EU sectoral policy. Workshops set up with spatial planners at the provincial level[12] confirmed the perception of a Europeanisation of national spatial policy and the lack of spatial planning policy at the EU level. This raises the concern that spatial planning that is implemented primarily to achieve sectoral objectives can lose its comprehensive, integrated nature.

With the SVIR, national planning policy seems to be gravitating towards a regional economic approach. After all, the SVIR not only defines a select number of interests but also focuses on a select number of policy areas. A novelty in the SVIR is that the government no longer regards the whole of the Netherlands as a national priority but, instead, only those areas containing clusters of economic activities of national importance (urban regions around 'mainports', 'greenports', 'brainports' and a number of 'valleys'). This move towards a regional economic approach corresponds with the findings of the ESPON 2.3.2 project (2007), which observed convergence in the planning cultures of EU countries; the dominant trend seems to be a blend of comprehensive integrated and regional economic approaches. In this sense, the SVIR has brought the Dutch spatial planning system closer to the EU average: 'Dutch spatial planning will lose

its distinctive integrated planning character and follow the convergence trend taking place in spatial policy in Europe' (Van der Wouden et al., 2011). The regional economic approach is also more consistent with the system applied by DG Regio, and in this respect, too, it would seem that the Dutch spatial planning system is becoming more European. This cannot however be claimed with certainty, as other countries are also undergoing their own transformations (Nadin and Stead, 2013).

The combination of decentralisation and deregulation of the spatial planning system and a growing emphasis on sectoral objectives (top sectors, infrastructure and energy) makes it increasingly difficult to create a national spatial framework to coordinate EU sectoral policy. This task has now been placed in the hands of the provinces. How will they deal with this responsibility, and what governance implications does this have?

2.2.2 Influence on vertical coordination

Not only have the provinces been put in charge of spatial planning, they are also increasingly responsible for the implementation of EU policy (Mastenbroek et al., 2013). This delegation of authority has strained governance relationships. In a recent report, the Dutch Council of State noted: 'Given that decentralisation – despite possible efficiency gains – is accompanied by insufficient financial resources to maintain the same service level, sub-national authorities are forced to either provide more limited or lower quality services, or pay the difference themselves' (Dutch Council of State, 2013: 56). The latter strategy is only possible up to a point: 'As regards financing, the Division (Advisory Division of the Council of State) finds that the linking of spending targets to decentralisation payments, plus the *Wet Hof* (Sustainable Public Finances Act) and the *Wet schatkistbankieren* (Treasury Banking Act), place additional constraints on the management and spending of sub-national authorities' (Dutch Council of State, 2013: 56). These changes in domestic governance can reduce the likelihood of achieving EU objectives: 'Given the complexity of European legislation, combined with an often limited understanding of Europe and a lack of information, sub-national authorities risk implementing and enforcing European law incorrectly, particularly in the context of spending cuts and reduced expertise at the national government level' (Mastenbroek et al., 2013: 12).

Significantly, this risk has also been devolved. The *Wet Naleving Europese regelgeving publieke entiteiten* (Compliance with EU law by public entities Act, NErpe Act) was adopted in 2012 to deal with this issue. According to this Act, any fines imposed by the EU on the Netherlands may be passed on to the sub-national authorities responsible for implementation of the policy (Dutch Senate, 2010). In a reaction to the NErpe Act, the Association of Provincial Authorities (IPO) and the Association of Netherlands Municipalities (VNG) called for a 'reverse right of recourse' to hold national government accountable 'if the national government fails to transpose European rules into Dutch legislation properly' (in Rob, 2013: 12). Clearly, EU policy cannot be seen in isolation from domestic governance relationships.

Although it is too soon to see the net effects of this legislation and policy, it could produce risk-avoiding behaviour among sub-national authorities, particularly provinces. As in the case of urban development projects, where parties – acting out of fear and/or ignorance – safeguard European interests in order to become completely 'Europe-proof', it is possible that provinces and municipalities may impose additional research obligations, exclude certain options, exemptions or solutions, or favour more detailed development plans to avoid non-compliance with EU policies (Zonneveld et al., 2008). In addition to the increased administrative burden that this would place on spatial development, it could also result in different plan content.

The ambition to remove national gold-plating could also influence sub-national authorities' approach to EU policy. In nature policy, for example, setting targets that go beyond the EU minimum can provide a buffer against non-compliance (Backes et al., 2011). Removing gold-plating removes this buffer, making sub-national authorities more vulnerable, which in turn may reinforce risk-avoidance behaviour. In that case, national gold-plating is simply replaced with provincial gold-plating.

This introduces an interesting tension with regard to vertical coordination. The national government is responsible for transposing EU directives into national legislation. It is also the national government, as the Member State representative, that is held accountable for any breaches of EU law (Rob, 2013: 9–10). Although sub-national authorities are responsible (and, under the NErpe Act, liable) for implementation domestically, they were not directly involved in the EU policy development process, whereas the national government certainly was. Problems that arise in the implementation phase can, in theory, be given insufficient attention due to a lack of ownership and communication. Since the national government has become less involved in spatial planning, it may be less conscious that its transposition decisions problematically impact spatial planning (see Chapter 4). On the other hand, the national government can help provinces achieve via other sectoral policies; changing the

Multilevel governance, spatial planning and renewable energy

In the 2008 Climate and Energy Package, the EU Member States agreed that a certain share of energy should come from renewable sources by 2020. A share of 14% (increasing to 16%) was set for the Netherlands. This target (together with other CO_2 mitigation and energy saving targets) was subsequently translated into the National Renewable Energy Action Plan (NREAP). The Dutch NREAP set its own target that the capacity of wind turbines on land should be increased to 6,000 MW, which was roughly three times the capacity at the time the European guidelines came in effect (Van Hoorn and Matthijsen, 2013).

There was considerable local opposition to the wind turbine programme. A survey carried out in 2008 for the then Dutch Ministry of Housing, Spatial Planning and the Environment showed that no fewer than 60% of projects were abandoned due to local opposition. The conclusion was that it had become common practice to lodge complaints against wind energy plans. Negotiations between the national government and the provinces were also strained. Arguments such as 'the EU demands it' or 'it's good for the climate' proved unconvincing and only resulted in uniting local residents and politicians against 'The Hague'.

What had started as a fairly technocratic exercise to achieve an agreed renewable energy target became a battle over spatial development. Until then, energy had – unlike nature conservation, infrastructure or urbanisation – been a fairly sectoral theme, and rarely a point of contention within spatial planning. The traditional task of balancing interests of renewable energy versus landscape conservation was decentralised along with the decentralisation of spatial planning in general. Since 2009, National authorities come into play however when it comes to large-scale wind farms in designated areas of the country. Although the national wind energy strategy 'Wind op Land' assigns responsibility to provinces and municipalities for enabling wind farms, national government can still take executive action when the planning process for large-scale parks stalls.

rules governing the use of manure could help achieve EU environmental standards for example (Ligtvoet et al., 2008: 20). In an advisory report to the provinces, Mastenbroek et al. wrote: 'Certainly when sub-national and national interests do not run parallel, it is crucial for sub-national authorities to gather information on the background, intention and implication of European legislation' (2013: 20).

This mismatch between national governments being responsible for incorporating EU policy into national legislation but not considering themselves responsible for the implementation of that legislation was voiced repeatedly during the provincial focus group meetings. The debate on wind energy (see text box) is a case in point. Decentralisation is not always compatible with strict EU targets, and sometimes political reality can shift responsibility back to the national government. The case of renewable energy also shows that the national government is an important link in the chain. In this case, the national interpretation of the renewables target (wind turbines on land) resulted in the issue being returned to national level. The national government could have simply adopted the EU target and left it up to the provinces to decide how to achieve it.

Vertical coordination is strained not only by matters of compliance, but also by financial aspects, particularly spending cuts. Many provinces and municipalities wish to continue to provide services that have been abolished (i.e. for which there is no budget) instead of decentralised. Examples include the former National Landscapes, National Buffer Zones, urban recreational areas and location policy for businesses (e.g. retail outlets). These factors, combined with the economic crisis, make it increasingly interesting for sub-national authorities to obtain EU funding – an interest that was confirmed during the provincial focus group meetings. However, national government and the provinces have differing opinions when it comes to the necessity of EU subsidies in the Netherlands. In a letter dated 19 September 2011, for example, the IPO protested against the national position that cohesion funds should only be used for the poorest regions (and therefore not for Dutch regions). Accepting EU funds can sometimes require a change in policy priorities as they come with all kinds of conditions attached, one of which is co-financing. If these funds play a greater role in the budgets of sub-national authorities, the influence of 'Brussels' could increase vis-à-vis 'The Hague'.[13] Could this entail a shift in allegiance as well?

This raises the question about the extent to which sub-national authorities act independently in the EU arena. According to Mastenbroek et al. (2013: 35), Dutch provinces have a 'reasonable to good' position in Europe; they have frequent contact with the EC, the EP,

the Committee of the Regions and (to a lesser extent) national bodies that deal with EU policy. However, there is no research on how the provinces and municipalities operate in Brussels when it comes to national interests. A broader study found different explanations for sub-national authorities choosing to lobby independently in Brussels (sometimes even in conflict with national interests). Party-political differences between national and sub-national authorities provide one explanation. The extent of decentralisation (Tatham, 2010) can also play a role. A third factor is the importance attached to a particular issue. A study of environmental legislation, for example, found that regional authorities will cooperate with their national government if the latter finds an issue important (Tatham, 2012). It is therefore to be expected that sub-national authorities will fall in line on important issues, and that they operate more autonomously for issues that, as a result of decentralisation, receive less attention (e.g. spatial planning). This view is echoed by Mastenbroek et al. (2013), who call for 'a certain restraint in acting independently in Europe where conflicts of interest exist between provinces and national government or between provinces' (Mastenbroek et al., 2013: 65). It is, however, too early to tell whether this advice is being followed, as decentralisation and spending cuts are still ongoing.

2.3 Denmark

The Dutch approach to the EU decision-making process and multilevel governance in the spatial planning system can be put into perspective when compared to another Member State. Spatial planning governance in Denmark has many similarities with that in the Netherlands. Both countries are typified as decentralised unitary states and both have a planning tradition within the comprehensive integrated approach. Even more importantly, significant changes have taken place in both countries regarding the division of responsibilities in spatial planning. In the Netherlands, the changes took place within the spatial planning system (system reform and policy decentralisation); in Denmark this occurred via a general public administration reform. In the Netherlands, the changes in domestic governance had consequences for the interface between EU policy and spatial planning, but was this also the case in Denmark?

This case study first addresses Denmark's approach to the EU decision-making process and policy development. Considerable differences were found between the ways in which Danish and Dutch institutions attempt to exert influence at the EU level. Subsequently, the changing position of spatial planning in Denmark was examined as well as the possible consequences this could have for EU policy implementation. Finally, a number of conclusions were drawn regarding the differences between the two countries.

2.3.1 Multilevel governance in Denmark

As early as the 1970s, Denmark developed a system for coordinating its participation in the EU policy-making process. This system has hardly changed over the years, and is renowned for giving the Danish Parliament a relatively strong position (Møller Sousa, 2008). The steps taken in the system are attuned to the EU policy development process (preparation, decision-making and implementation).

During early stages of EU policy-making (expert-group stage or commission stage) only the relevant Danish ministries are actively involved, and coordination takes the form of official consultation. A procedure for impact analysis was introduced in 2006, but the core of the system has remained intact. Party politics do not become involved until the decision-making process. A crucial difference with the Netherlands is that, before the minister may negotiate in the EU Council, he or she must first be given a mandate from a parliamentary European Affairs Committee consisting of 17 members, with the political parties being represented according to their seats in parliament. The government position is presented to the committee for discussion. If the minister does not receive a majority approval – which often happens with a minority government (not uncommon in Denmark) – he or she needs to negotiate changes to the national position with the committee. These meetings are held regularly, usually just before EU Council meetings. This system allows the Danish Parliament to exert direct influence on the negotiations conducted by the Danish Government in the EU Council. In the implementation phase, the ministry draws up a proposal for a bill or resolution. The minister responsible then presents the proposal to the parliament, which is then dealt with in accordance with the normal legislative process. Input from the regions is ensured throughout the process by interdepartmental and departmental planning committees and action plans (Mastenbroek et al., 2013: 47).

The influence of the Danish Parliament is unusually strong compared with that of other EU countries, but in practice its involvement is limited to the second – decision-making – stage. In this phase, parliament exerts its influence on the Danish position and takes a critical stance on the purpose and necessity of the EU policy proposal. Once a decision has been made, Denmark is very compliant, offering little resistance

during implementation (Christensen, 2010: 22). This somewhat modifies the image of the Danish Parliament as an important player in the EU decision-making process. Furthermore, since the 1970s, the system has focused exclusively on decision-making within the EU Council, but the EP has since become much more important. Moreover, more issues are being decided on by majority vote or consensus reached through debate (see also Section 2.1). The Danish system based on a national veto, therefore, has become somewhat of an anachronism (Møller Sousa, 2008).

2.3.2 Spatial planning in Denmark

As noted, the Danish planning system is placed within the comprehensive integrated approach. This is sometimes seen as proof that the Danish planning system has achieved a strong level of vertical and horizontal coordination, and is, therefore, like the Netherlands, an example for other EU Member States to follow (e.g. Damborský and Grill, 2009). However, like the Netherlands, Denmark has undergone considerable institutional reform in recent decades, requiring this position to be put into perspective.

The spatial planning system was developed in Denmark to coordinate the various levels of government and sectors in dealing with the rapid urban growth of the 1950s and 1960s. The main challenges were to find locations for industry, combat urban sprawl and improve environmental quality. During the 1970s, spatial planning was placed under the Ministry of Environment, where a social-democratic ideal of distributive justice dominated. Danish spatial planning was based on the principle of urban hierarchy and a hierarchy of public facilities and services. The system itself had a strong hierarchical aspect too: plans were made at municipal, county and national levels, and plans made at lower levels were required to conform to those made at higher levels. This meant that a minister could block municipal plans if they threatened national interests. Although political priorities changed in the 1980s – towards promoting economic growth – the spatial planning system, with its focus on coordination, remained intact. The rise of sustainability issues in the 1990s meant that spatial planning increasingly became as a framework for integrating policy areas (Galland and Enemark, 2013).

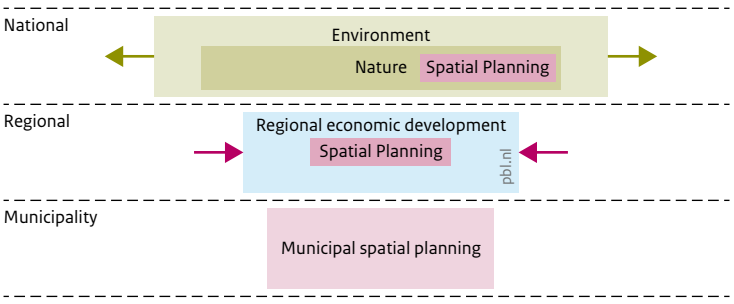
This practice of integration was institutionalised under the 1992 Planning Act. Various sectoral acts were combined in the new spatial planning act and sectoral plans incorporated into the spatial plans, in particular the regional plan. Similar to the 2008 Dutch Spatial Planning Act, the Danish hierarchical system of plan assessment was abolished and a system of general rules introduced. One direct consequence of this was that the national planning department implemented more detailed rules (e.g. for coastal protection and out-of-town retail) for regional plans, which meant that spatial planning began to act less like a framework for integration and more like a sector (Galland and Enemark, 2013). This trend was reinforced by the Spatial Planning Act of 1997, which took a strong top-down approach. The aim of the act was to protect city centres. Consequently, all plans for out-of-town retail were suspended and national rules introduced for retail impact studies and the preservation of the existing retail hierarchy. In the same year, the Danish Agency for Spatial and Environmental Planning published an inventory of plan capacity of municipalities, which showed that they had allowed too much development. This study was followed by a bill to prevent new spatial development from taking place if a plan was over four years old. This top-down approach by the Danish Agency for Spatial and Environmental Planning was vehemently criticised by the municipalities (Damsgaard, 2013). New legislation, implemented in 2000, partially restored the balance between national government and the municipalities, but the position of the counties was further eroded. However, this was only a hint of the changes that would take place a few years later with the Act of 2007.

2.3.3 The influence of reform on multilevel governance

The sweeping governmental reform that took place in 2007 had a significant impact on spatial planning governance in Denmark. First of all, the number of municipalities was slashed from 271 to 98, and these were given more responsibilities, including spatial planning. According to Galland and Enemark, geographical and functional relationships were 'largely overlooked' when merging municipalities (2013: 12). Secondly, the 14 counties (*amter*) were abolished and replaced with five elected administrative regions (Hengstermann and Maci, forthcoming). Although these new administrative regions are required to draw up regional spatial development plans (Ministry of the Environment, 2007: 3), these plans are focused on economic development and are non-binding (Damsgaard, 2013). Regional and national planning in Denmark, therefore, can no longer be considered to provide an integrated framework (Galland and Enemark, 2013: 18). In practise, Danish spatial planners have been forced to take a flexible approach to be able to work within the context of changing governance relationships (Sehested, 2009).

At the same time, power is being consolidated at the national level and spatial planning policy coupled more strongly to environmental policy, often in order to comply

Figure 2.4
Changing position of spatial planning in Denmark



Source: PBL

with EU policy (Andersen, 2008). National government has assumed responsibility for the implementation of most EU policy; only rural development has been decentralised to the regions. This has increased the workload at the national level (interview, Kristiansen, 2014). In accordance with the 2005 Spatial Planning Act, regional plans may not conflict with the national plan, which also provides for the implementation of EU policies, such as the Water Framework Directive, Natura 2000 and the Floods Directive. The sectoralisation of national spatial planning was given a further boost when the National Planning Agency was transferred from a central location in the Ministry of the Environment to a department within the Danish Nature Agency.
The fixation on the environment in national spatial planning was recently criticised by spatial planners: 'The Town Planning Institute, for example, mentions that the [2009] national planning report refers to the recently formulated national Green Growth Strategy as an important precondition for future national development but lacks any kind of consideration of the spatial impact of the implementation of the strategy' (Damsgaard, 2013).

2.3.4 Reflection on the Netherlands

There are interesting similarities and differences between Denmark and the Netherlands regarding the way in which both countries deal with uploading and downloading EU policy. In a study on the impact of EU policy, Bovens and Yesilkagit (2010: 57) noted: 'In many respects, the Netherlands has been the exact opposite of Denmark [...]. On the one hand, the EU was taken for granted, hardly ever politicised, and the Dutch parliament expressed relatively little interest in EU policies. On the other hand, the Netherlands was easy going, in terms of the implementation of directives.' The countries converged somewhat in the 2000s with respect to politicisation, as the Netherlands became more Eurosceptic. Even so, the role of the Dutch Parliament is still very small compared to that of Denmark. In both countries, implementation is depoliticised; it is mainly civil servants representing the ministries who make the decisions so crucial for spatial planning (Christensen, 2010). In contrast to Denmark, the Netherlands has no specific procedure to ensure the input of regional and local authorities in the implementation of EU legislation – this occurs via other national policy-making channels (Mastenbroek et al., 2013: 47).

More remarkable are the differences between the two countries with respect to spatial planning. National spatial planning in the Netherlands has long aimed for an integrated approach, while in Denmark it has become more sectoral and part of environmental policy. Therefore, it should come as no surprise that the Danish spatial planning system has fewer problems when it comes to the implementation of EU environmental legislation. The question remains whether EU policy will also result in the sectoralisation of the Dutch spatial planning system.

2.4 Conclusion

The emergence of an EAS has had a significant impact on governance in the Member States, including policy areas where the EU has no official mandate, such as spatial planning. It is hard for spatial planners to fully understand EU policy-making, because the policies relevant to them are fragmented across various DGs. It is also hard to measure the net influence of the EU on governance in spatial planning, because individual policies differ so widely in their implementation regimes.

Within this complex structure, not only Member States, but also NGOs and sub-national authorities try to influence the EU decision-making process. This can create conflict on issues where national government and the provinces take differing positions (e.g. the structural

funds). This is not the only area of conflict, as far as vertical coordination is concerned. The provinces are increasingly responsible for the implementation of EU policy (Mastenbroek et al., 2013: 11) and are affected by any bottlenecks between sectoral objectives and spatial policy and between sectors. At the same time, national interests are represented through the EU Council (where provinces have no access), national government transposes regulations into national legislation and the Netherlands as a Member State is considered responsible if these regulations are not complied with. This tension between policy-making and policy implementation is heightened by the decentralisation of spatial planning responsibilities, spending cuts and constraints on financial autonomy (e.g. the Hof Act) and by the possibility to pass on fines imposed for non-compliance with EU policy (NErpe Act).

The Dutch Government has assumed responsibility for a well-functioning spatial planning system. In the context of this 'system responsibility', attention needs to be paid to the problems that can arise from poor vertical coordination between municipalities, provinces, national government and the EU. This is particularly important because poor horizontal coordination, as witnessed by the highly sectoral character of EU policy, can create problems for spatial planning (the subject of Chapter 3). Good vertical coordination implies that the Dutch Government should not simply act as a conduit for passing on policies and fines between the EU and sub-national authorities. In an increasingly decentralised spatial planning system, it is important that the national government rethink its role as a link in the governance chain. The problems surrounding renewable energy show how ostensibly sectoral matters can suddenly demand spatial decisions at the national level.

Playing the role of intermediary between the EU and sub-national authorities comes with challenges and responsibilities for the national government. On the one hand, it means translating the experiences of sub-national authorities and other EU policy implementers into a joint strategy for providing input into the EU decision-making process. On the other hand, it means giving sub-national authorities the latitude they need to conduct spatial planning effectively when translating EU policy into national legislation. This matter is dealt with extensively in Chapter 4. In any case, the reality of an EAS and the complexities of multilevel governance implies that simplistic governance principles, such as 'only minding one's own interests' and the 'two-layer principle', are almost impossible to apply in a spatial planning system and arena that is becoming increasingly European.

Notes

1 Formally speaking, the EU cannot be considered a government tier because it claims no sovereignty over Dutch territory. The EU's competences (exclusive or shared) are derived from a treaty signed by the sovereign Member States, but once in place, EU law supercedes national law.

2 Since the Lisbon Treaty, territorial cohesion has become an EU objective, paving the way for policy proposals that help achieve this. This formal competency may not be necessary as the new treaty adopts a new, broader principle of subsidiarity, allowing the EU to take action if an objective can be achieved more effectively by the EU than by a national government (Needham and Hoekveld, 2013). This reasoning was applied in the proposal for a Maritime Spatial Planning framework directive (CEC, 2013d).

3 The terms 'territorial' and 'spatial' are sometimes used interchangeably. However, there is an important distinction: 'territorial' emphasises administrative boundaries, while 'spatial' does not.

4 The EC published the report Cities of Tomorrow and launched an online tool in 2011 to support sustainable urbanisation strategies (Reference Framework for Sustainable Cities). A proposal was also drawn up to reserve extra funds from the European Regional Development Fund for spatial projects in urban areas. DG Regio preferred 5% of the structural funds to be used for sustainable urban development in the period that was lying ahead. It could also be possible to promote spatial planning in the operational programmes of the Member States under the 'innovation' objective.

5 Pol (2013: 831) states: 'despite the economic crisis, the EU is continuing its environment policy, which it is linking to the move towards a "greener" economy. Spatial planning is therefore again becoming the focus of attention.'

6 This section uses the Dutch convention of making a distinction between the two acts by means of capitalisation.

7 The Environmental Licensing (General Provisions) Act (Wet algemene bepalingen omgevingsrecht, Wabo) was implemented in the same year to streamline the planning process. Another change was the Crisis and Recovery Act (Crisis- en herstelwet, Chw), implemented in stages to expedite spatial planning developments. The Wro was also changed (Spoedwet-Wro) to enable higher tiers of government to pass on regulations and to introduce exemption rules (Buitelaar et al., 2012). The legal system governing spatial planning has therefore been through some turbulent times, and many issues still require clarification.

8 The Netherlands Institute for Spatial Research (RPB), now the Netherlands Environmental Assessment Agency (PBL).

9 This rule (Dutch: ladder voor duurzame verstedelijking) states that, for all new urban developments, sub-national

governments must argue that (1) there is a qualitative and quantitative regional need for the development, (2) whether the development can be accommodated in the existing urban area, and, if not, (3) whether multimodal connectivity is possible. There are no administrative sanctions for a failure to comply with the rule, but citizens are allowed to challenge plans on these grounds.

10 There is no clear definition of this: 'Although the terms system and system responsibility are commonly used in national policy, their precise meaning and the tasks involved are unclear' (Beck et al., 2013: 13). The Ministry of BZK recently described the concept of system responsibility in the Code Interbestuurlijke Verhoudingen (Code of Inter-authority Relations), in which the government expresses its ambition to 'develop the quality of its environmental policy system during the coming years so that sub-national governments can operate successfully' (BZK et al., 2013).

11 This is the best-known way of classifying spatial planning systems. It is, of course, a generalisation of the many variables that make up a system (Nadin and Stead, 2013).

12 See colophon page for the list of participants.

13 This additional influence will be modest at best due to the drop in available EU funding. Much less money is available from the ERDF in the 2014–2020 period: about 500 million euros compared with 830 million euros in the previous period. It is interesting to note that the subsidies for regional cooperation (Interreg) are growing: 9 billion euros are budgeted for the coming period (Interreg V) compared with 7.8 billion euros in the previous period (Interreg IV). The Netherlands managed to obtain 276 million euros from Interreg IV (http://www.interreg-fwvl.eu/nl/) and is eligible for 342 million euros in the 2014-2020 period (Info-regio, 20 Nov. 2013). The more sub-national authorities participate in Interreg, the closer the ties will become with neighbouring regions (Interreg Va) and regions in neighbouring countries (Interreg Vb). Partnerships between sub-national authorities and other EU regions can, certainly if concrete agreements are drawn up, influence governance relationships in the Netherlands, especially when the interests of regions in such partnerships no longer coincide with those of the national government.

THREE

Policy coordination

A wide variety of EU policies have relevance for spatial planning. Examples include the common agricultural policy, structural funds, nature protection and competition policy. This chapter seeks to illustrate the influence of EU policies by compiling a composite map. Although every effort was made to be inclusive, not every impact relevant for spatial planning could be represented. In the end, nine different 'impact types' were identified, six of which could be mapped out. The second part of the chapter considers the level of coordination or conflict between sectoral policies and the implications of this for spatial planning. In order to put the Dutch case into perspective, the chapter closes by considering the case of Hungary.

3.1 Spatial policy and sectoral regulations

Officially there is no EU spatial planning policy. Instead, various EU policies can and do affect spatial developments and spatial planning processes (Van Ravesteyn and Evers, 2004). Figure 3.1 depicts a hypothetical area being influenced by various EU policies. Air quality standards are particularly relevant in urban areas, while those on nitrates and water quality mostly concern rural areas (and are, in part, negatively affected by agricultural subsidies). On the one hand, the EU stimulates urban development by way of the structural funds, while, on the other, it sets limits on national investment (i.e. state aid). In certain cases, the EU obliges its Member States to draw up spatial plans or implement zoning (e.g. in connection with flooding risks or industrial safety), whereas in other cases, a mere description of a certain issue according to a particular methodology will suffice (e.g. noise pollution). Finally, spatial measures are sometimes required to accomplish EU objectives; such as wind parks to help achieve renewable energy targets.

EU policies can be mutually reinforcing, but this is not always the case. Policies can run in parallel, which means that opportunities for synergy may be missed (Robert et al., 2001). More adversely, objectives may conflict and this is especially problematic when they converge on a certain area. In such cases, accumulation of sectoral policy objectives may lead to sub-optimal spatial outcomes (Zonneveld et al., 2008). Moreover, as there is little coordination in the formulation of EU policy, sectoral EU objectives can clash with national or regional spatial goals (VROM-council, 2008).

This chapter seeks to elucidate the spatial impacts of EU policy and identify where tensions can arise. For each policy, a brief explanation is given of how it manifests itself spatially and how this impact can be illustrated cartographically. Possible spatial conflicts and tensions in planning practice are then discussed in more detail, and the case of Hungary is considered as a comparison to the Dutch situation.

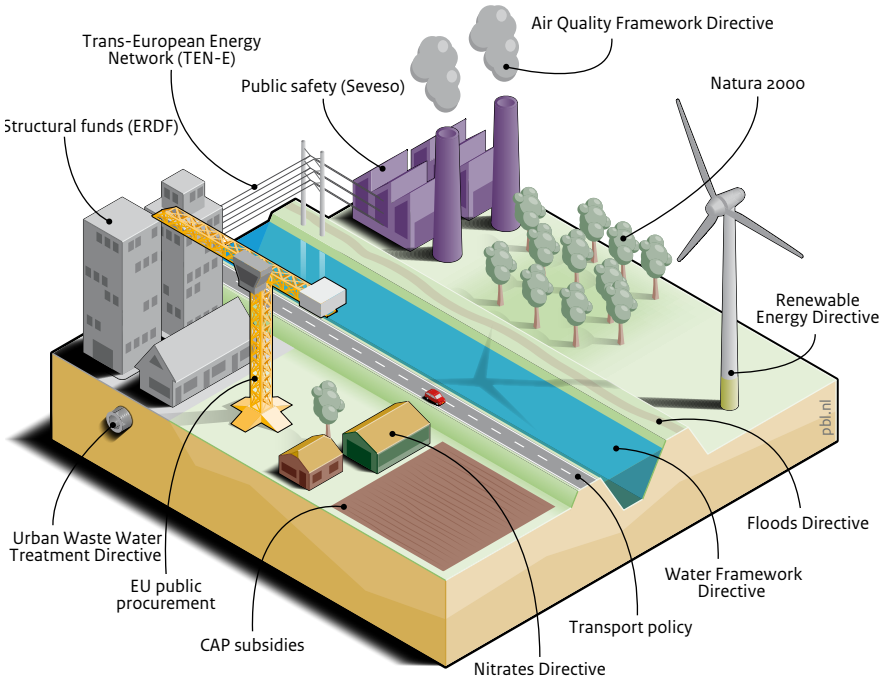
3.2 Mapping impact

Chapter 1 argues that EU policy affects spatial planning in three ways. First, this influence may be on *content*; for example, by placing legal restrictions on the use or development of certain areas, or by stimulating such uses through subsidies.[1] Second, EU policy may affect the planning *process*; for example, by affecting the length and speed of the development process, the order of tasks to be executed or the parties involved.[2] Third, EU policies may affect the relationship between the various parties involved in spatial planning, in other words, *governance*. All three types of influence, in so far they could be isolated and measured, were included in the analysis, even if their effect on spatial developments was unclear (we were primarily interested in noting if an impact existed at all). On the other hand, the impact of implementation choices was excluded if these were purely the result of domestic discretion or gold-plating.

3.2.1 National Spatial Structure

One of the most important Dutch planning concepts is the National Spatial Structure (RHS): 'The areas and networks that are deemed of national importance by the national government will be included in the National Spatial Structure' (Ministry of VROM, 2006). The current national RHS map consists of a superimposition of

Figure 3.1
Hypothetical presence of EU policies



Source: PBL

various spatial investments and land-use restrictions considered to be of 'national importance' (IenM, 2012).

In theory, the same exercise cannot be performed for EU policy. After all, the European Union does not have an official spatial policy and will never claim to have 'an interest' in one of its Member States, as these are sovereign states. In practice, however, one can define European interests analytically as any expression of EU policy. Using this definition, it becomes possible to create a cartographic representation of EU policy. For completeness, the notion of EU interest is used in a broad sense. In the first place, it includes all policy that originates from the EU, regardless of whether the Netherlands pursues the same policy, or even if the EU policy is the result of Dutch policy 'uploading' (the same, obviously, also applies on other levels; for example, if a province has designated a certain national landscape as a provincial landscape, the 'national interest' with respect to that landscape does not simply disappear). In short, an EU interest does not mean that something is 'imposed by Brussels', but only indicates that policy frameworks of the European Union apply. To achieve this, nine 'impact types' were identified.

All information already available, or which could be collected within a reasonable amount of time, on relevant EU policies were entered as map layers into a geographic information system (GIS). This resulted in an indicative composite map displaying the unofficial European Spatial Structure in the Netherlands. Again, we have to stress that this is a purely analytical exercise, as the only spatial policy at the EU level consists of the non-binding informal European Spatial Development Perspective (ESDP) and the intergovernmentally created Territorial Agenda, which is more like a political manifesto than real policy. Neither document contains a policy map. The section below presents the methodology used to determine how and whether a certain policy category should be included on the composite map.

3.2.2 Impact types

Nine different types of policy impact were distinguished inductively. This was done by reflecting on how a particular policy could affect spatial planning. Six of these 'impact types' could be displayed cartographically:

1. *Area designation*: this concerns areas or locations that are conferred a special legal status such as Natura 2000 areas. The 'EU interest' is to ensure these areas remain or become suitable for certain functions, or to protect nearby functions (e.g. Seveso Directives).
2. *Intervention areas*: this concerns areas where measures are called for, for example, to comply with certain environmental standards. This is in the interest of the EU because it brings local air or water quality up to minimum standards everywhere in the EU territory.

Areas adjacent to Nature 2000 areas may also require interventions if they contain protected species.

3. *Spatial investments*: this concerns areas and infrastructural networks that receive EU subsidies, such as the European Regional Development Fund (ERDF), LIFE+ and the Trans-European Transport Networks (TEN-Ts). The EU interest is implicit in the decision to promote certain spatial developments.
4. *Sectoral investments*: this concerns non-spatial subsidies with an uneven geographical distribution such as the Common Agricultural Policy (CAP) and the Framework Programmes (now Horizon 2020), which can have consequences for spatial planning and regional economic development. In this case, the spatial distribution is not a predetermined policy choice.
5. *Generic rules*: this concerns specific spatial policies or development projects affected by EU rules. Examples are policies on public procurement and state aid.
6. *Territorial cooperation*: this concerns the establishment of mandatory and voluntary transnational EU partnerships with consequences for spatial planning. Examples are the interprovincial regions (ERDF), catchment areas (WFD and Floods Directive) and EU regions (Interreg).

An additional three impact types could not be included on the map, either because they were too abstract or lacked a spatial aspect. Although they are not depicted on the composite map, they are certainly relevant to spatial planning:

7. *Research or planning obligations*: this concerns rules that can influence the planning process and sometimes even the content of a project or plan. Environmental assessments (EIA and SEA) are good examples. This is difficult to put on the map, however. Another example is noise pollution policy. Although it is in the interest of the EU that each Member State measures noise pollution according to the same method and drafts action plans to deal with problematic cases, the EU has not set any maximum thresholds or performance requirements itself. For this reason, the noise contours drawn up by the Netherlands were excluded from the composite map. Still, this impact type can have a substantial impact on planning processes and is dealt with in detail in Chapter 4.
8. *Spatial projects initiated to comply with EU policy*: this concerns generic EU policy which necessitates spatial development. For example, when wind parks are constructed to achieve renewable energy targets, or when port areas are expanded to handle the increase in biofuel imports as a result of EU policies. Although such developments affect both the process and content of spatial planning, the choice of method (for renewable energy, wind vs solar power; for biofuel, import vs production) and the choice of development location are fully at the discretion of the Member State. Such cases were therefore not included in the composite map.
9. *Changing relationships between actors*: this concerns situations where EU policy affects governance, such as relationships between sectoral departments or those between the national government and regional and local authorities (see Chapter 2). These are also difficult to map out.

3.3 EU policy in the Netherlands

This section lists the policies most relevant to spatial planning and identifies the corresponding impact types. Reasons are also given for the choice to include a particular indicator on the composite map. As the analysis took place in 2013, some of the information provided here may no longer be up to date. In most cases, this will have no consequence for the composite map, which is intended to provide a general picture of cumulative impacts.

3.3.1 Nature and environmental policy

Arguably the most important Directorate-General at the EU level in terms of spatial impact in the Netherlands is DG Environment. The policy area of this DG is much broader than its Dutch counterparts. In addition to air quality, soil pollution and noise pollution, it also deals with nature and biodiversity, water quality, water supply and, increasingly, land use.

Natura 2000

A good starting point for mapping out the EU main spatial structure is nature policy, Natura 2000, which creates a connected network of areas to protect flora and fauna. Natura 2000 includes all areas that fall under the protection of the Birds Directive (2009/147/EC) – Special Protection Areas (SPAs) – and those that fall under the Habitats Directive (92/43/EEC), Special Areas of Conservation (SACs). Although there are slight differences between these two directives, they work in more or less the same way: areas are assigned to protect certain species and steps taken to prevent decline in these species [*impact type 1*]. Developments (such as urbanisation) that threaten protected species, in theory, must be prohibited (Backes et al., 2011).

As the policy focuses primarily on the conservation of species, it is possible that projects both within and outside the SPAs and SACs are affected by EU nature protection policy. This could be because there are hot spots of protected species outside these areas that also require protection, or because proposed developments

could negatively affect the habitat of species within SPAs and SACs (e.g. due to a decline in water or air quality) [*impact type 2*]. In some cases, measures will need to be taken to improve the quality habitats [*impact type 8*]. Of all EU policies, the areas covered directly or indirectly (area of influence) by the Birds and Habitats Directives have the largest restrictive footprint in the Netherlands.

Life+

DG Environment is able to fund nature and environment projects through its Life+ scheme [*impact type 3*]. Although these funds are much smaller than those for agricultural or regional policies – certainly in terms of total investment in nature areas – they can still impact on spatial planning. Since the Life+ programme began in 1992, the EU has subsidised 157 projects in the Netherlands for a total of 106 million euros (EC website). Most (126) of these projects focused on innovation and, therefore, had only a limited spatial component. The other 31, for nature development and conservation, were more spatial in character.

Water policy

Unsurprisingly, EU water policy has a significant impact on the Netherlands. Water policy is implemented primarily through the Water Framework Directive (WFD). This directive (2000/60/EC) focuses on water quality and, to a limited extent, flood protection, and has procedural, institutional and substantive aspects. Because water does not respect administrative boundaries, the Water Framework Directive is implemented at the level of river basins. There are four such areas in the Netherlands, namely for the rivers Scheldt, Meuse, Rhine and Ems. All of these are international river basins, which means that water policy always needs to be coordinated with neighbouring countries [*impact type 6*]. A large number of water bodies in the Netherlands do not meet the quality standards of the Water Framework Directive or its daughter directives. Therefore, measures need to be taken to meet these requirements [*impact type 2*]. Such measures include ecological improvements to water bodies, fish ladders and the re-meandering of rivers, the cost of which has been estimated at over 2.9 billion euros (Ligtvoet et al., 2008).

The *Urban Waste Water Directive* (91/271/EC) also aims to improve water quality. This directive sets targets for water treatment plants for the removal of nitrogen, phosphorus and other substances from waste water [*impact type 2*] and introduces a reporting obligation [*impact type 7*]. The latest baseline report to the European Commission reads: 'This objective has been met for phosphorus since 1996, therefore well within the European directive deadline of 31 December 1998. The deadline has not been met for nitrogen. However, the required 75% target was also met for nitrogen in 2006, which means that the Netherlands has complied with Directive 91/271/EC in full since that year' (IenM, 2012). Because the water treatment plants completely meet the directive objectives, these are not included on the map.

Seawater quality is regulated by the *Marine Strategy Framework Directive* (2008/56/EC) and other policies. This directive obliges Member States to draw up a plan [*impact type 7*] for the protection of the marine environment by 2015. For the Netherlands, this is the North Sea. Waters that do not meet the targets require measures to be taken [*impact type 2*] to reach a 'good environmental status' by 2021. As such plans have not yet been drawn up, it is too early to include this as a separate map layer.

The EU also pursues flood protection policy. The *Floods Directive* (2007/60/EC) aims to minimise the negative impacts of flooding on human health, the environment, cultural heritage and economic activity. Member States are required to work together to identify risks and draw up plans at the catchment area level [*impact type 7*]. The EU does not set minimum standards itself, but leaves this to the discretion of the authorities responsible for the river basin districts. Therefore, there is no direct EU interest according to our definition, although there is an indirect one through mandatory cooperation [*impact type 6*].

Nitrates Directive

The Nitrates Directive (91/676/EC) aims to reduce water pollution caused by high nitrogen levels. The directive obliges Member States to designate nitrate-sensitive nature areas. Measures must then be taken to limit the nitrogen load in these areas [*impact type 1*]. The directive applies to the surface water of freshwater bodies and to groundwater used to produce drinking water. In practice, this means that the nitrate content of drinking water and surface waters cannot be higher than 50 mg per litre [*impact type 2*]. This directive mainly has consequences for agriculture insofar as it uses nitrate-based fertilisers.

Thresholds are also included in the directive's appendix concerning the application of animal manure per hectare of land, expressed in kilograms of nitrogen per hectare. It should be noted that the situation in the Netherlands is one of the most acute in the EU (Ligtvoet et al., 2008).

Air quality

The objective of air quality policy is to reduce the amount of pollutants in the air that harm humans and the environment, or to prevent them from entering the air in the first place. This is regulated in the Air Quality Framework Directive (2008/50/EC) and other daughter directives. These directives require Member States to measure concentrations of pollutants in the air according

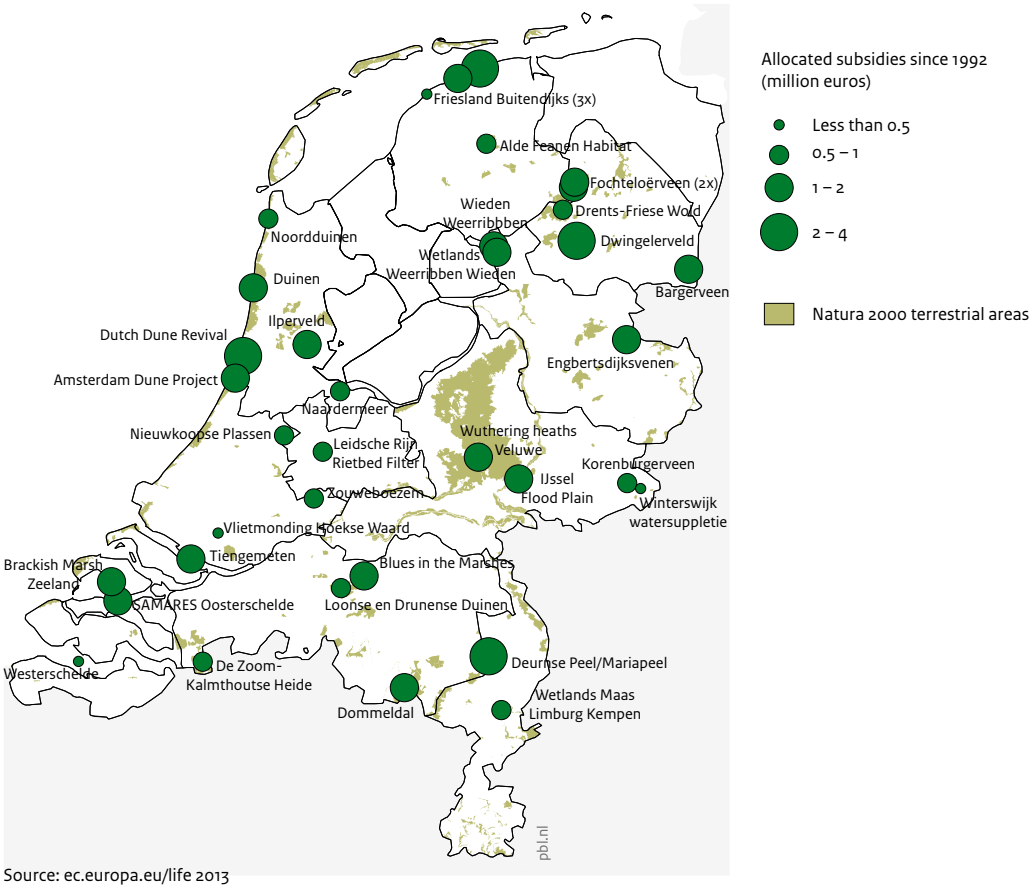
Figure 3.2
EU nature policy

Source: MNP 2007

Natura 2000 map layer
Although there are differences in the level of protection provided by the Birds and Habitats Directives, these are relatively subtle as far as this analysis is concerned. Both directives are legally binding and have a high protection status. For this reason, they were combined into a single layer in the map, with a distinction between water and land to improve readability.

Area of influence map layer
Disturbances in areas outside Natura 2000 areas may affect the protected species within. Spatial projects outside Natura 2000 areas may be at risk if they fail to take this into account. PBL Netherlands Environmental Assessment Agency has identified the areas where this risk is the greatest. Even if there is only a small chance that EU interests are in play in these areas, the consequences for planning can be significant.

Figure 3.3
LIFE+-subsidies



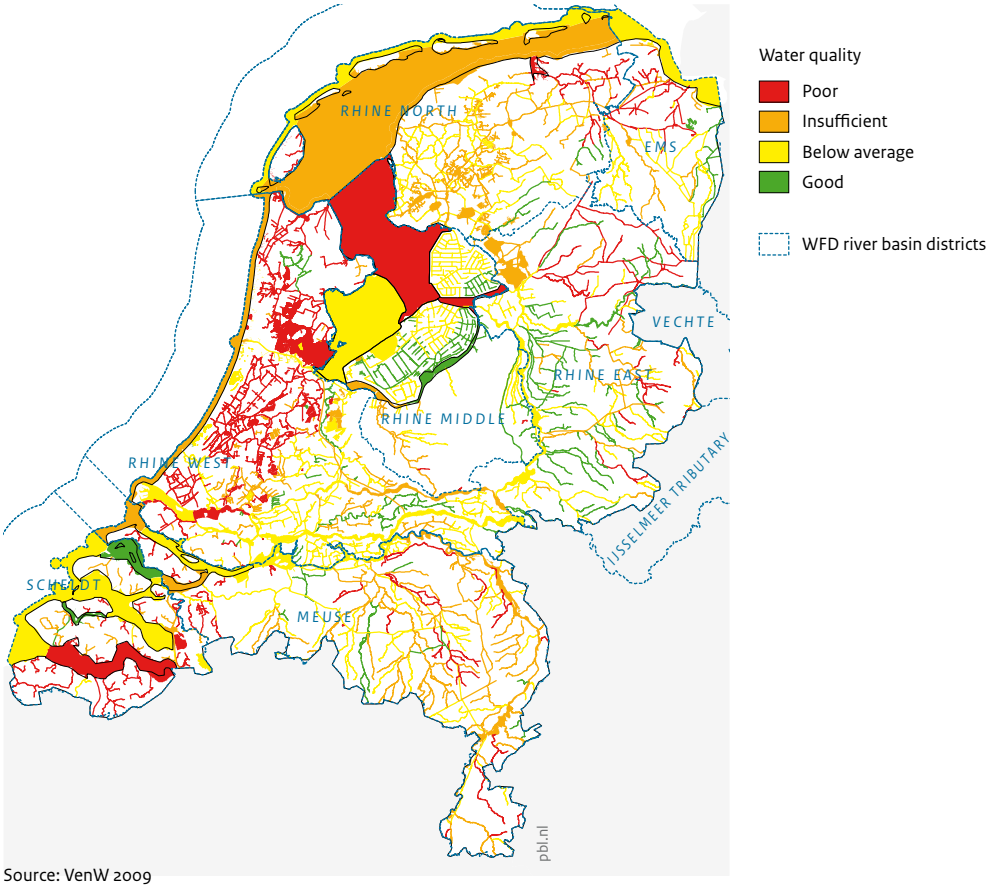
Source: ec.europa.eu/life 2013

Life+ map layer
The locations of all projects receiving Life+ funding since 1992 have been included on the map. Only the more spatial projects were included in the analysis. For this reason, the nature conservation category was included and environmental innovation excluded.

to a set method. If a threshold is exceeded, the Member State must draw up an action plan [*impact type 7*] that includes concrete measures to improve air quality. This is an obligatory performance requirement that applies to all locations where people may be present. The EU interest with regard to air quality policy, therefore, affects all regions (a minimum quality level applies everywhere) but only becomes manifest in areas where thresholds are being exceeded [*impact type 2*].

Industrial emissions
The Industrial Emissions Directive (2010/75/EU) combines several directives on air pollution reduction, including the IPCC Directive (2008/1/EC), which obliges Member States to regulate emissions of certain contaminants to water, air and soil from large polluting industries (including factory farms). Member States must adopt measures to prevent pollution by applying best available technologies. They must also prevent significant pollution, minimise waste, ensure that they are energy-efficient and take measures to prevent accidents and limit their impacts. If operations at a particular location are discontinued, steps must be taken to reduce the risk of pollution and to return the site to a good environmental status. For spatial planning, this means that new industrial installations may only be built once a permit has been obtained in accordance with the directive [*impact type 7*]. As permits are linked to set emission ceilings, it is possible that a new installation cannot be built due to environmental constraints resulting from this policy [*impact type 5*]. It is also possible that spatial developments are needed to bring pollution down to meet EU minimum quality

Figure 3.4
EU water policy



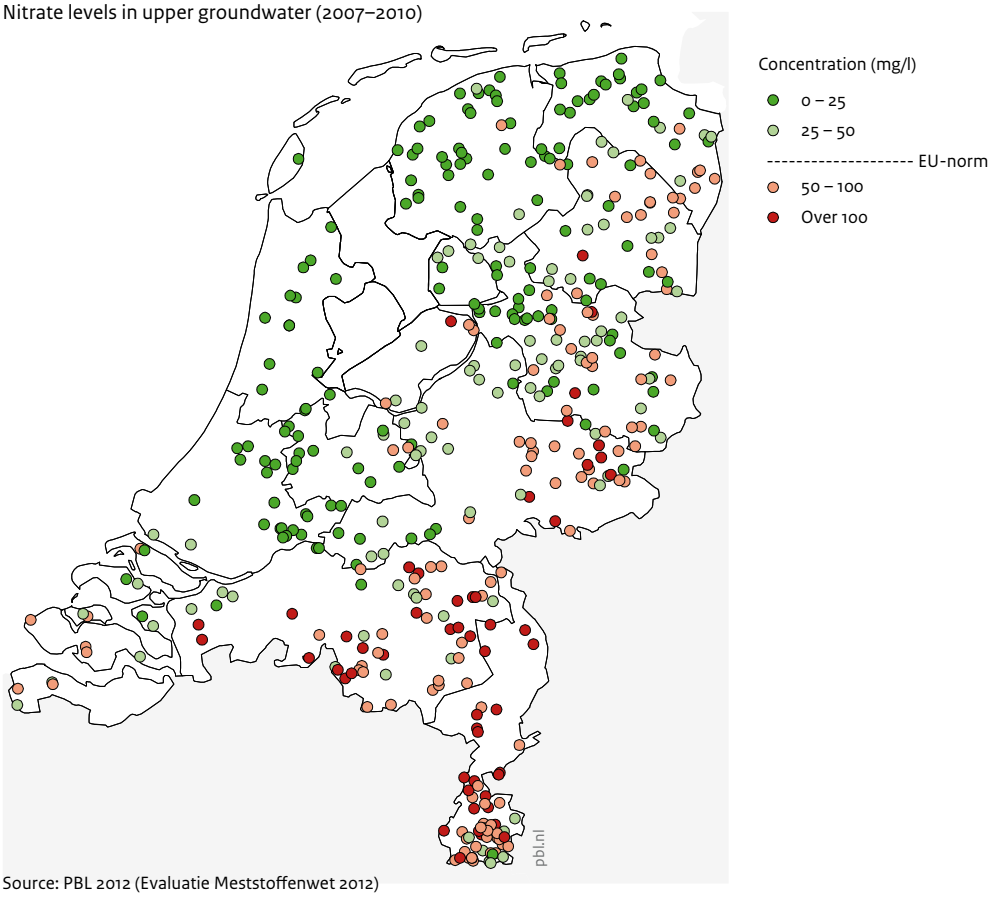
Source: VenW 2009

Water quality map layer
Europe has an interest in ensuring good water quality, and this interest applies to all regions in the EU. Regions that do not meet minimum standards are obliged to take measures to bring the water quality up to the required level, and this is where EU interests are discernible. For this reason, only the categories that run a risk of non-compliance (poor, insufficient and moderate) have been included on the map.

River basin map layer
The fact that the EU requires Member States to work together to meet water policy objectives (in the Water Framework Directive and Floods Directive) means this has an institutional impact. River basin borders are therefore shown on the map.

Figure 3.5
EU nitrates policy

Nitrate levels in upper groundwater (2007–2010)



Source: PBL 2012 (Evaluatie Meststoffenwet 2012)

Nitrate map layer

The Netherlands has chosen to designate the entire country a 'nitrate-sensitive area' with regard to implementation of the Nitrates Directive. This lack of spatial differentiation means that this has not been included in the map, even though the directive obviously has a high impact.
It is unclear exactly which water bodies in the Netherlands fail to meet the Nitrates Directive. Measurements have been carried out for both surface waters and groundwater in certain areas. All recently monitored locations failing to meet EU standards were included in the map with an icon.

standards [*impact type 8*]. As these potential impacts cannot be pinpointed beforehand, they also could not be included in the map.

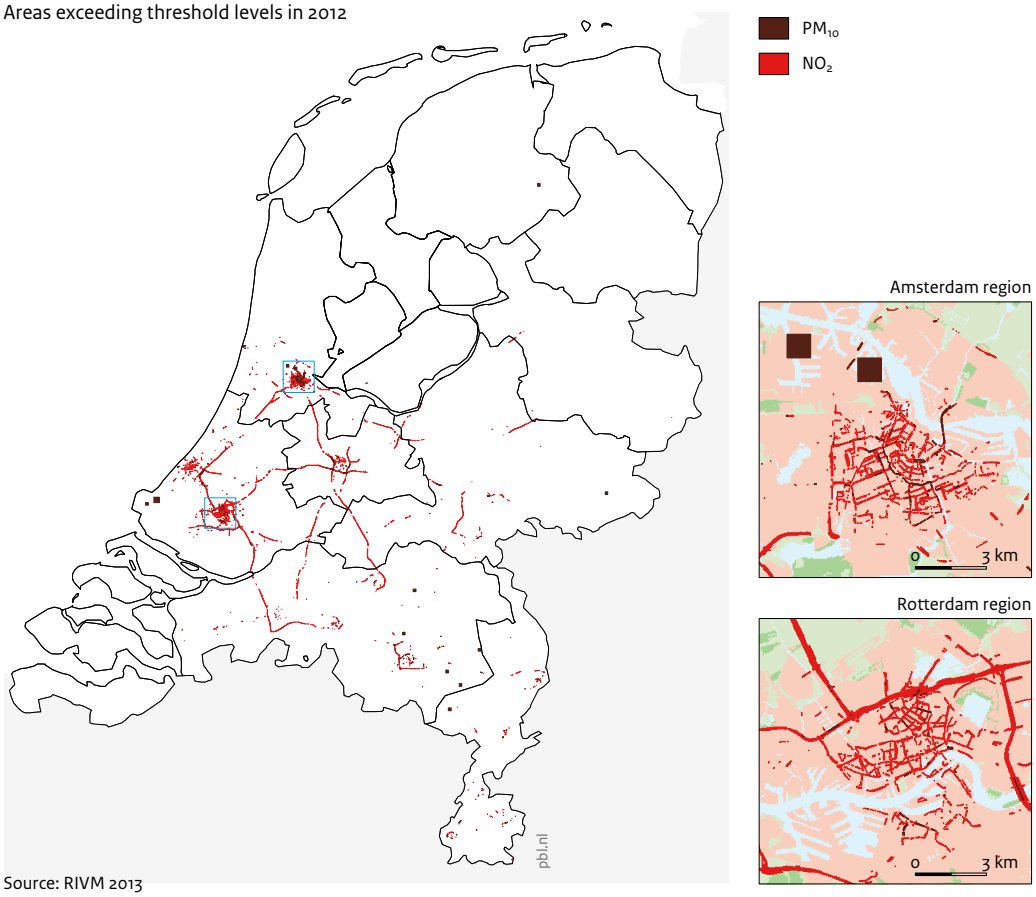
In addition, Member States have pledged to limit the emission of pollutants that cause soil eutrophication and produce ozone. This applies to nitrogen oxides (NO_x), sulphur dioxide (SO_2), ammonia (NH_3) and non-methane volatile organic compounds (NMVOCs). These agreements are codified in the NEC Directive (National Emission Ceilings for Certain Atmospheric Pollutants: 2001/81/EC). Member States may choose which measures they wish to take to comply with the emission ceilings, and some of these could have spatial impacts [*impact type 8*], but cannot be mapped out beforehand.

Noise pollution

EU noise pollution policy focuses on monitoring and managing people's exposure to environmental noise, for example, from factories or traffic. This is regulated in the Directive Relating to the Assessment and Management of Environmental Noise (2002/49/EC). Other than the EU policies on nitrates and air quality, no thresholds have been set at the EU level. Member States are only obliged to monitor noise according to a certain prescribed method and draft action plans to limit noise to a certain

Figure 3.6
EU air quality policy

Areas exceeding threshold levels in 2012



Source: RIVM 2013

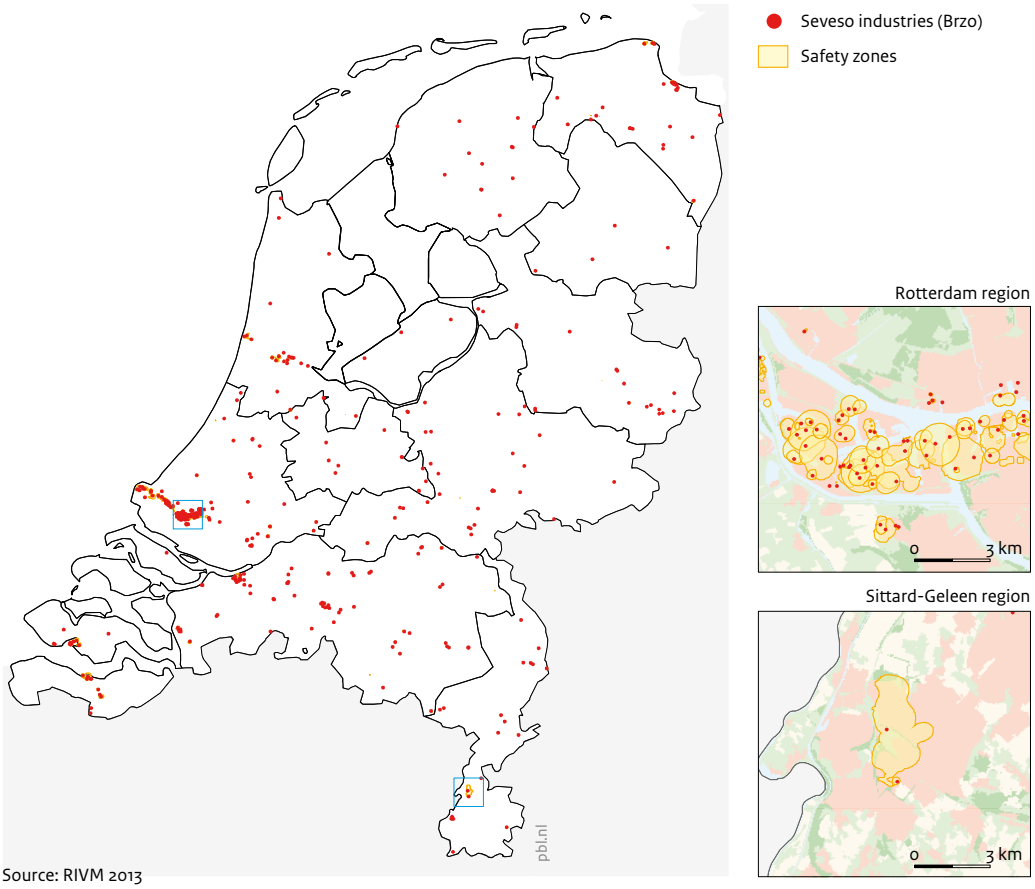
Air quality map layer
It is in the interest of Europe that air quality does not harm public health or the environment, and this applies everywhere in the EU. However, measures only need to be taken in areas that do not meet minimum standards. Cases where this occurs for PM_{10} and $PM_{2.5}$ are included as a map layer.

level. No EU sanctions apply if objectives are not met, nor are such sanctions expected in the near future.

EU noise policy can affect spatial planning. After all, noise maps need to be produced and these maps and/or action plans need to be revised whenever spatial developments impact on established noise zones [*impact type 7*]. Although it is highly possible that these action plans will restrict the content of spatial planning or require extra measures, this impact, strictly speaking would not be a consequence of EU policy but domestic interpretation. After all, the content and effectiveness of the action plans remain the responsibility of the Member State. For these reasons, the various noise zones in the Netherlands and even the extensive noise contours around Schiphol Airport are not included on the map.

Public safety
EU policy on public safety has been in place since the 1980s when, following the catastrophic explosion of a chemical factory in the town of Seveso (Italy), the Seveso Directive (82/501/EEC) was adopted to reduce the risk of major industrial accidents. This directive was replaced (simplified and expanded) in 1992 (96/82/EC) and again in 2003. The most recent incarnation, Seveso-III (Directive 2012/18/EU), obliges Member States to identify industrial plants that work with certain substances named in the directive and draw up safety plans to prevent major accidents and limit their effects on humans and the environment [*impact type 7*]. In addition, any planning of vulnerable functions (e.g. schools, hospitals) must take into account the presence of industrial plants and these functions must be located at a certain distance from

Figure 3.7
EU public safety on industrial risks



Source: RIVM 2013

Public safety map layer
In theory, the directive only applies to installations that work with certain hazardous substances. However, no data is available on the precise locations of such installations, although data is available regarding the wider industrial area in which they are found. These sites have been placed on the map. Safety zones have also been put on the map for sites that have established such zones.

such plants. For this is purpose, safety zones are installed around these plants [*impact type 1*].

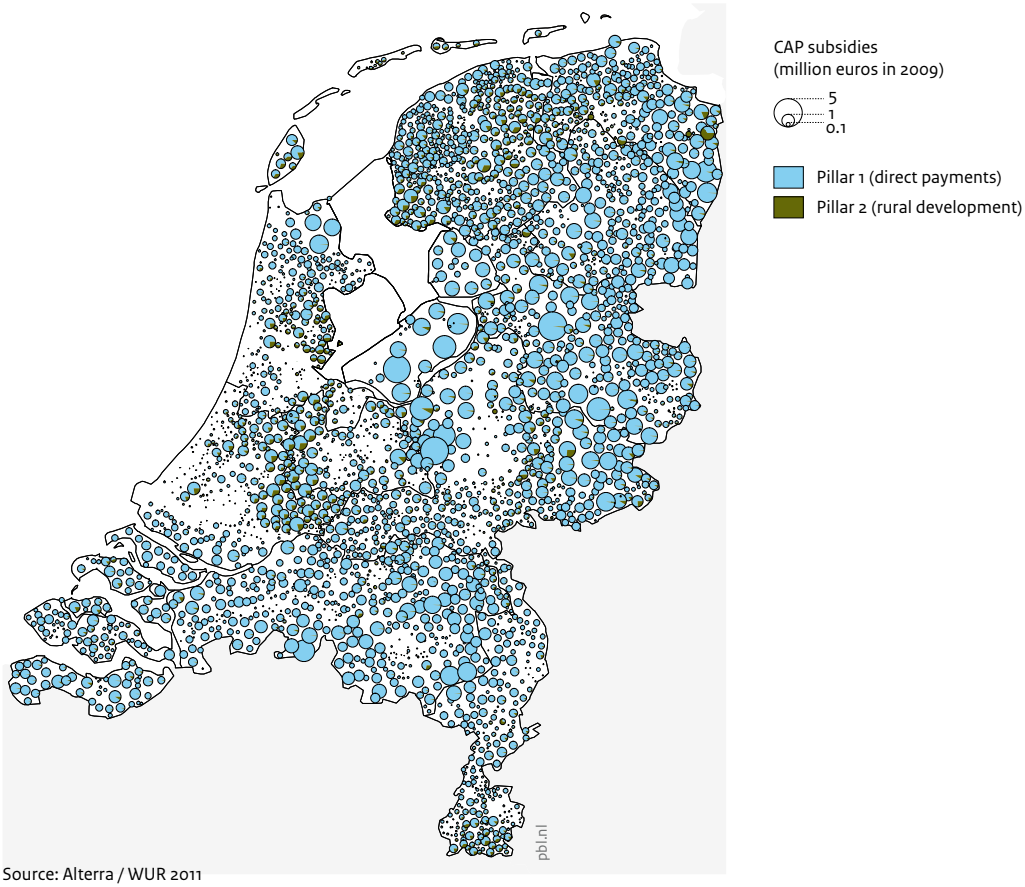
Environmental impact assessments

The EU requires Member States to assess the possible environmental impacts of major projects and plans. This is regulated in the Environmental Impact Assessment (EIA) Directive (97/11/EEG) and the Strategic Environmental Assessment (SEA) Directive (2001/42/EC). The mandated EU impact assessment system can differ from existing national procedures. The long and extensive tradition that the Netherlands had in this area became a disadvantage in the implementation of the directives because it proved difficult to integrate them into the existing national legal framework (Van Ravesteyn and Evers, 2004). Although the SEA and EIA can result in different choices being made in the spatial planning process, the influence is mainly procedural [*impact type 7*], and therefore excluded from the map.

Climate and energy policy

Global issues such as climate change and energy supply security require action at the EU level. To this end, the EU has set a so-called 20/20/20 target: a 20% reduction in greenhouse gas emissions compared to 1990 levels, 20% of energy generation from renewable sources and a 20% increase in energy efficiency by 2020. Member States have drawn up individual performance targets to achieve this EU objective.

Figure 3.8
EU Common Agricultural Policy



Source: Alterra / WUR 2011

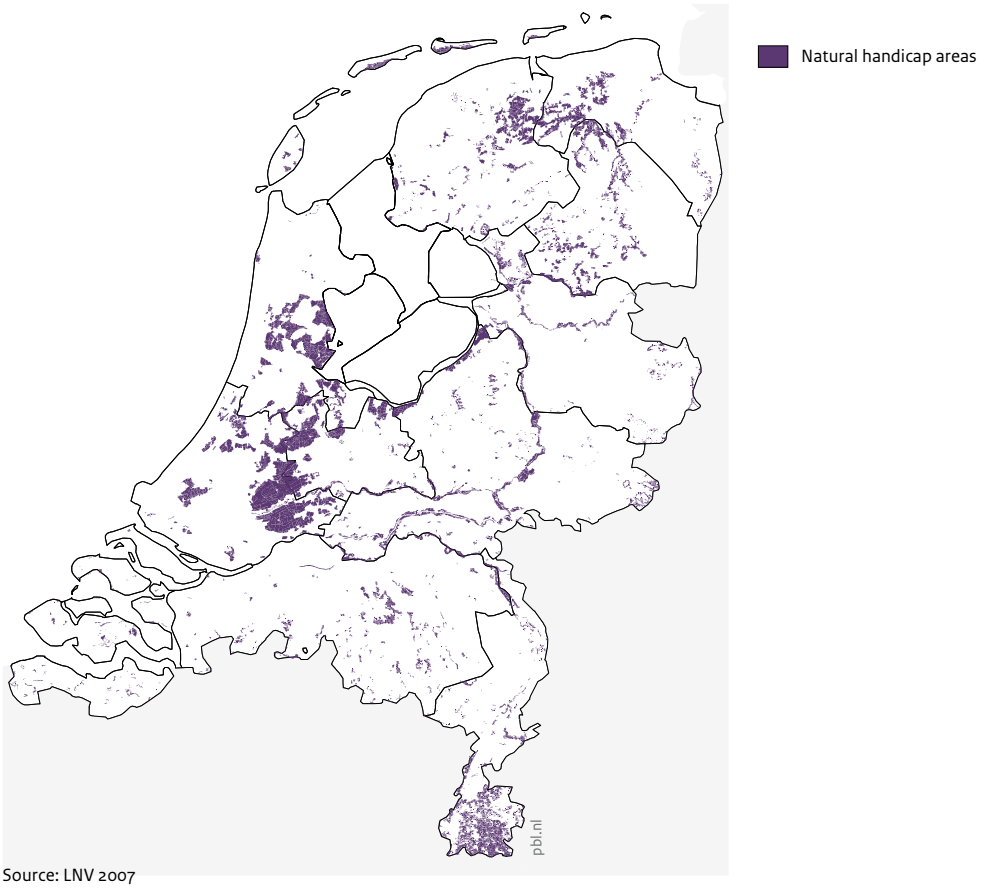
CAP map layer
Every farmer who receives subsidies through the CAP is registered, so theoretically, it should be possible to map this out by linking these sums to cadastral data. However, we were not able to obtain data on the recipient level. Wageningen University did however provide us with CAP subsidy data at the four-digit postcode level. This data was mapped, making a distinction between Pillar 1 and Pillar 2 subsidies. Less-favoured areas were mapped separately due to the difference in impact type and for the sake of readability.

The most important objective of the three for spatial planning is renewable energy. The Netherlands has committed itself to achieving a 14% renewable energy share by 2020. This has been codified in the Directive on the promotion of the use of energy from renewable sources (2009/28/EC). The spatial impact of renewable energy sources is far greater than that of conventional sources, and each (e.g. biomass, wind turbines) has a different type of impact (Van Hoorn et al., 2010).
As discussed in Chapter 2, the Dutch national government has chosen to achieve the objective mainly through wind energy on land – which carries with it significant implications for spatial planning [*impact type 8*]. This has already affected intergovernmental relations [*impact type 9*]. As this impact is the result of a policy choice made at the national level – in theory, the Netherlands could achieve its 14% target using solar energy – the spatial developments related to these choices are discretionary and, therefore, were not included on the map.

3.3.2 Agricultural policy

In terms of the number of hectares, the Common Agricultural Policy (CAP) has more influence than any other EU subsidy scheme in the Netherlands. This policy rests on two pillars. The first, directed at strengthening the agricultural sector, has in the past ensured that certain crops are more profitable than others and resulted in the consolidation of businesses and landscapes. These

Figure 3.9
EU less favoured areas policy



Source: LNV 2007

spatial effects were reduced when Pillar 1 was uncoupled from production and redirected to income support for farmers. Since 2015, income support is based on the number of hectares and greening targets. Pillar 1 of the CAP can have the following spatial impacts: ecological focus areas (set-aside for biodiversity, landscape elements), crop diversification (a minimum of three crops) and the conservation of permanent grassland [*impact type 4*]. Pillar 2 (rural development) is less substantial in terms of funding, but more spatial as it focusses on improving competitiveness and environmental quality in rural areas [*impact type 3*]. The policy relating to less-favoured areas (LFA) is also spatial because it is aimed at specific areas in which farmers, as a result of geographical circumstances or other reasons, find it difficult to make a living [*impact type 3*].

The CAP affects land prices and, therefore, the real estate market. After all, if farms are viable thanks to EU subsidies, farmers will be less likely to sell their land to speculators or use it for non-agricultural purposes (e.g. recreation, retail, hotels and catering) [*impact type 4*]. For the same reason, the CAP can have an indirect impact on (i.e. undermine) spatial policy that is aimed to rearrange rural land uses, as farmers may be less willing to cooperate.

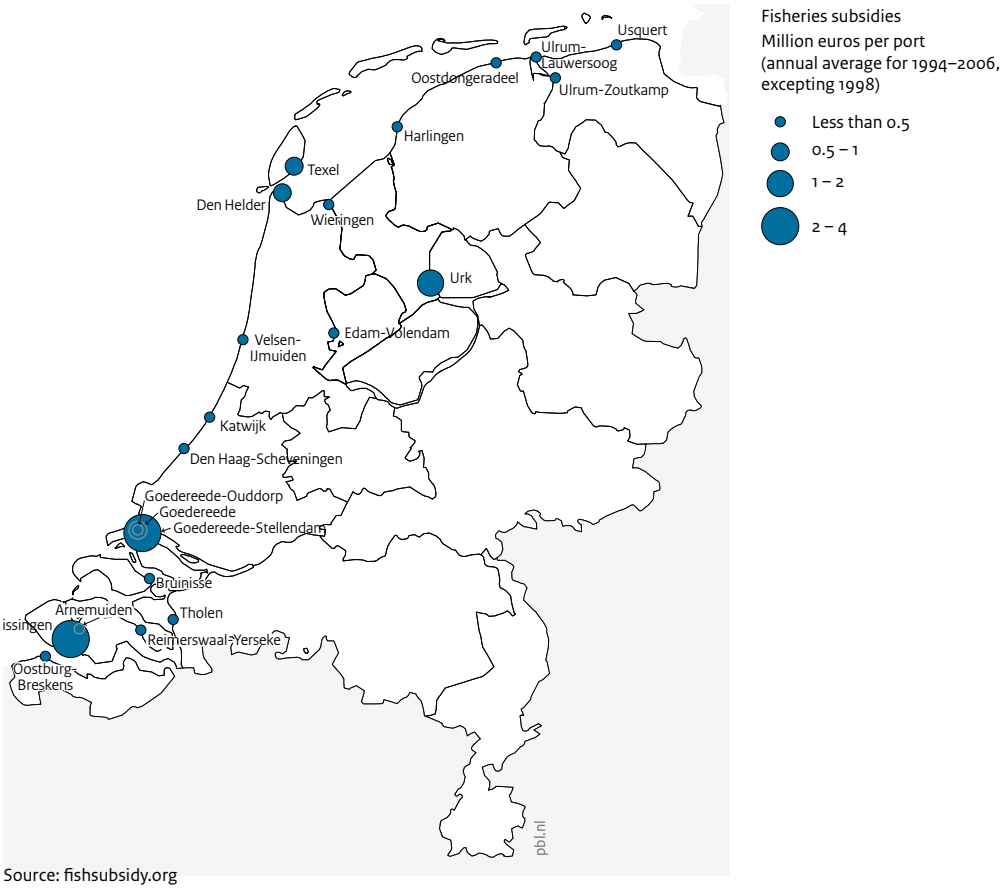
Fisheries

The EU fisheries policy was developed in the early 1980s to consolidate the many bilateral and multilateral agreements concerning fish stocks. DG MARE is currently responsible for this policy and is striving to implement an integrated policy for European marine areas (including pollution control, environmental protection, coastal development, employment and border controls).

The fisheries budget totalled 4.3 billion euros in the 2007–2013 period. Although every part of the sector receives subsidies (e.g. also fish product processing and marketing), there is a particular focus on communities affected by recent developments within this sector.

Unfortunately, there is a lack of data on recipients in the current budgetary period (due to privacy considerations),

Figure 3.10
EU Common Fisheries Policy



Source: fishsubsidy.org

Fisheries map layer
Available data on fisheries subsidies (total investment per port) are included as a map layer. This concerns subsidies received by the Netherlands in the last two periods (1994–1999 and 2000–2006).

making an accurate overview impossible. Historically, Spain is the main recipient, with this Member State receiving almost half the total fisheries budget. Although the subsidies are relatively area-specific (disbursed to a specific port or fishing company), the relationship with spatial planning is very indirect. These sectoral investments [*impact type 4*] may impact the local economy or conflict with other forms of marine management (e.g. Natura 2000).

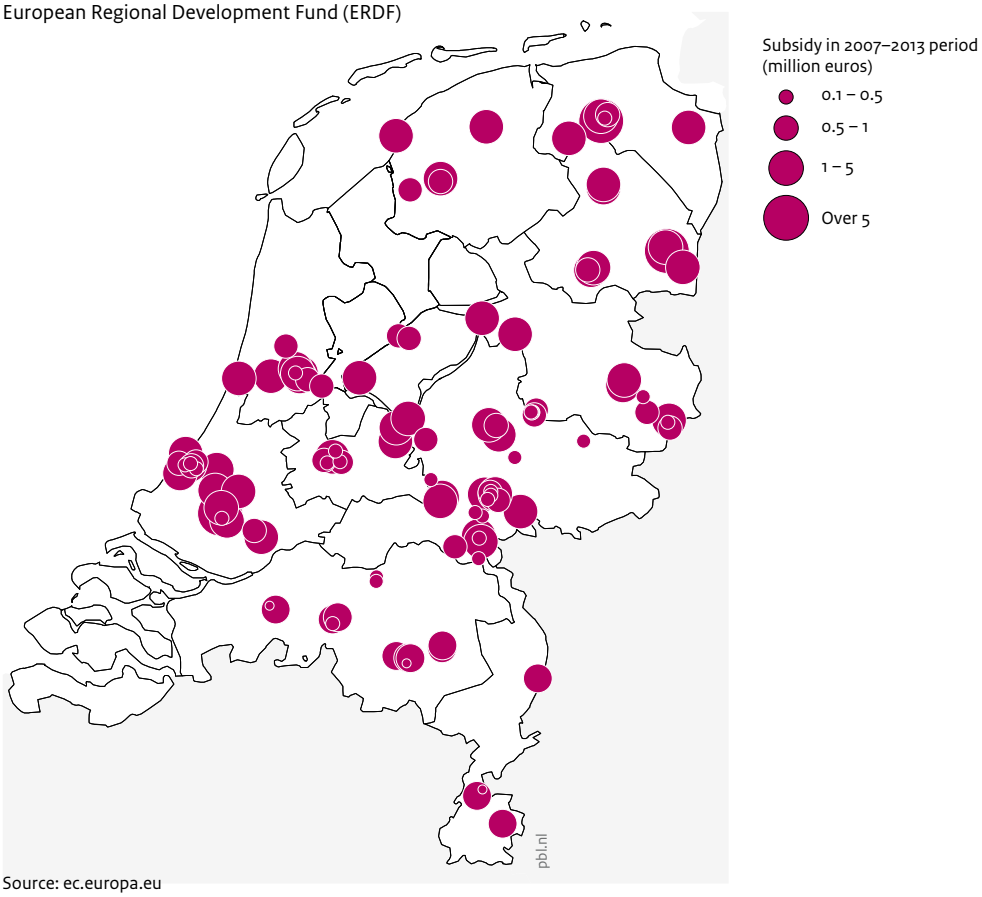
3.3.3 Regional policy

Regional policy aims to improve social, economic and territorial cohesion. This is mainly achieved via subsidies, making regional policy one of the most expensive policies of the EU. Of the various funds that comprise regional policy, only the European Regional Development Fund (ERDF) is considered here, as this is the only one that has a direct spatial impact on the Netherlands.[3] It should be noted that the structural funds are far less important in the Netherlands than in most other EU countries; ERDF investment represents less than 1% of total public investment, which is the lowest percentage in the EU after Luxembourg and Ireland (Healy and Bristow, 2013).

ERDF funding can influence spatial planning in various ways. Firstly, it can be used to fund development projects, such as business parks, infrastructure and knowledge institutes [*impact type 3*]. Secondly, the ERDF affects government budgets, as funding is not only supplied by the EU, but also needs to be matched by national government and/or other funding sources (the maximum co-financing percentage is between 50% and 85%). This can affect governance relationships [*impact type 9*] and policy priorities. Thirdly, the EU attaches all kinds

Figure 3.11
EU regional policy (development)

European Regional Development Fund (ERDF)



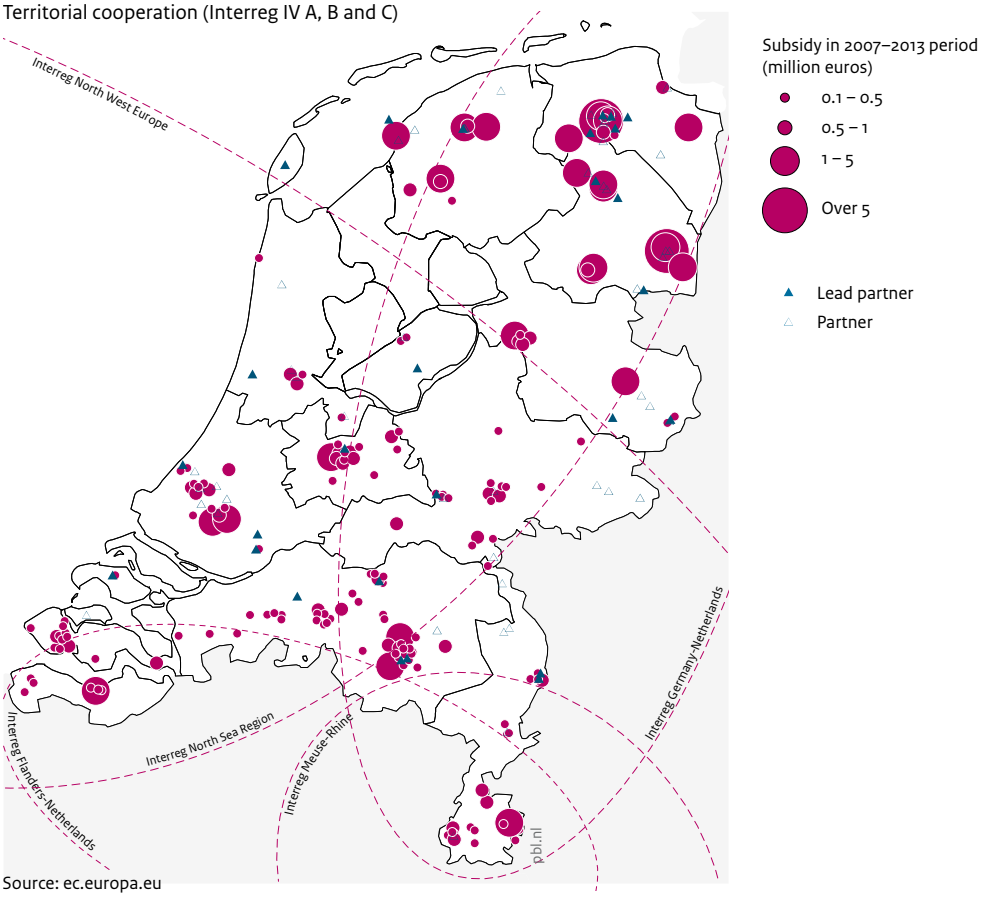
Source: ec.europa.eu

ERDF map layer

Although all kinds of projects are funded using ERDF subsidies, only some qualify as spatial. For example, investments in innovative technologies for clean energy may have a long-term spatial impact, but this is not immediately obvious. Similarly, although large subsidies for knowledge institutes can increase local employment and hence traffic, this effect is very minor. For these reasons, only those projects that received ERDF subsidies between 2000 and 2013 and had a real or possible physical component were included in the map. Such projects could relate to any form of construction, demolition, transformation, expansion or renovation. Spatially relevant research was also included, such as feasibility studies for spatial projects or relating to a particular spatial issue like traffic. Projects purely relating to knowledge development and knowledge exchange were excluded. The assessment was made case by case, based on the individual project descriptions on the website of the programme concerned, and, for this reason, is partly subjective. The size of the EU subsidy is also given (in euros), with a minimum threshold of 100,000 euros.

Figure 3.12
EU regional policy (cooperation)

Territorial cooperation (Interreg IV A, B and C)



Source: ec.europa.eu

ERFD territorial cooperation (Interreg) map layer
Areas eligible for cross-border cooperation (Interreg IVA) and transnational cooperation (Interreg IVB) are indicated by dashed lines on the map. The impacts on spatial planning mainly relate to certain projects. The method for including projects in the map was the same as for other ERDF investments: projects were selected that had a significant physical component and a minimum EU contribution of 100,000 euros. Unlike the operational programmes, it is not always clear how much of the project budget was spent in the Netherlands. Where known, this was indicated as such. In other cases (e.g. Interreg IVC), only a distinction was made between lead and project partners.

of procedural conditions to its subsidies, which can impact decision-making processes [*impact type 7*]. Fourthly, the regional organisation chosen by the Netherlands to implement the ERDF (Nuts 1: interprovincial cooperation) could result in more intense territorial cooperation at that level [*impact type 6*].

Territorial cooperation (Interreg)
The Netherlands is eligible for funding intended to promote territorial cooperation, under the name Interreg. The fourth Interreg programme, which comprised the basis for analysis, is set up as follows:

- Interreg IVA (cross-border cooperation) supports projects in border regions that alleviate negative border effects. The Dutch are involved in four Interreg IVA programmes: The Netherlands/Germany, Flanders/The Netherlands, Euregio Meuse-Rhine and 2 Seas Trade [*impact type 6*]. In some cases, this supports spatial projects, such as cross-border public transport [*impact type 3*]. For the Netherlands, Interreg IVA is coordinated by the Ministry of Economic Affairs.
- Interreg IVB (transnational cooperation) supports projects in a given transnational 'macroregion' under

a joint secretariat. The Netherlands is involved in the Interreg IVB programmes North Sea Region and North West Europe. Interreg IVB is coordinated in the Netherlands by the Ministry of Infrastructure and the Environment (IenM). Here too, some projects involve spatial investments [*impact type 3*].
- Interreg IVC (interregional cooperation) supports projects focusing on knowledge exchange between regions. The cooperation is not necessarily geographically contiguous. Very few projects are spatial, but some can affect spatial planning. For example, the ESPON research programme (European Observation Network for Territorial Development and Cohesion) and Urbact (focusing on cities) are funded from this source. Part of the ESPON funding is used to involve national or regional stakeholders in research activities, which can affect the decision-making process and governance [*impact type 9*] surrounding spatial planning.

3.3.4 Competition policy

Competition/internal market policy can affect spatial planning, and usually it affects planning processes rather than content. The most relevant competition rules are state aid (regulation), public procurement (directive) and the freedom of establishment of companies (EU Treaty).

State aid

Government support can have a significant impact on spatial planning, for example, when municipalities give money to a developer for qualitative improvements or amenities. However, this can also disrupt the free market. For this reason, state aid above a certain minimum threshold must be reported to the European Commission for approval. The European Commission applies a very broad definition of state aid, which includes the sale of land under the market price. The Dutch lawyer Melvin Könings estimated that municipalities widely ignore this reporting obligation, particularly with respect to spatial development (*Binnenlands Bestuur*, 22 Nov. 2013: 27).

According to the DG Competition online database, as of 2013, 794 incidents of state aid have been reported in the Netherlands since 2000. The database also includes the decision for 467 of these cases. Most notifications are irrelevant for spatial planning and even fewer are easy to map out (e.g. because they relate to a national or provincial subsidy for sustainable energy). Using a method similar to the one described above for regional policy, 64 cases were marked as relevant for spatial planning. Most of these state aid notifications were not considered to be market-distorting, and many not even as state aid at all.

For the other cases, the European Commission launched an investigation into whether the state aid constituted a breach of competition rules. These cases are summarised in Table 4.7. As can be seen, some cases concern physical projects, such as support to ports or urban infrastructure [*impact type 5*]. In such a case, removal of the support given could endanger the project concerned. In some cases, the spatial planning process or organisation (rural restructuring plans, factory farming, housing corporations) can conflict with state aid rules.
For example, municipal 'active land policy' has recently been in the spotlight, in particular the favourable conditions under which housing corporations were allowed to buy land to build on (Tasan-Kok et al., 2011).

Public procurement

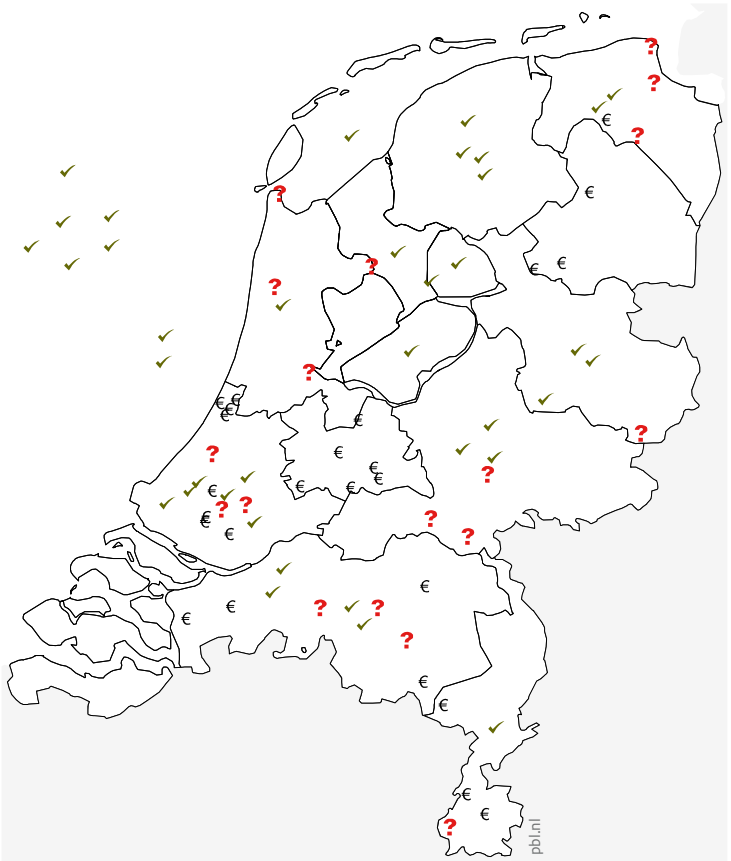
EU public procurement rules mainly affect the planning process, usually by lengthening it [*impact type 5*]. Moreover, the tendering process can also change the parties involved in the project as the public body is no longer completely free to choose its contractor. This can impact the form and content of public-private partnerships [*impact type 9*]. In the Netherlands, European public procurement announcements are published on the national website Aanbestedingskalender.nl.

Freedom of establishment

The EU Treaty guarantees the free movement of people, services, investments and goods. Any policy that hinders these freedoms can be considered a breach of EU legislation. Similarly, the Services Directive (2006/123/EC) forbids Member States from refusing planning permission due to economic impact. In 2011, the European Court of Justice ruled that Spain's restrictive retail policy for hypermarkets violated the freedom of establishment of companies. Similar regulations exist in the Netherlands. In early 2013, the European Commission (former DG MARKT) drew up an action plan for retail, stating that a 'zero tolerance policy' would be applied to Member States obstructing the free establishment of retail outlets, for example by making planning permission contingent on a positive retail impact study (CEC, 2013b).

If a restrictive retail policy is abolished for non-compliance with the EU Treaty or the Services Directive, this will have significant consequences for spatial planning, both in terms of content (more out-of-town retail) [*impact type 5*] and partners (more foreign companies, reduced role for the province) [*impact type 9*]. As it is still unclear whether the Dutch restrictive retail policy is non-compliant, and because the outcomes are speculative, this EU policy could not be included in the map.

Figure 3.13
EU competition policy



Source: Europese Commissie (http://ec.europa.eu/competition/state_aid/register); aanbestedingskalender.nl

State aid map layer

The European Commission collects data on state aid and publishes this online. Cases of spatially relevant state aid from the year 2000 onwards are indicated by an icon on the map. Cases involving national and provincial policy (e.g. those concerning housing associations) were excluded because they could not be assigned a specific enough location. Municipal state aid is indicated by an icon at the geographical centre of the municipality.
An indication is also given of the European Commission's response. If no official response was available, no icon was placed. Given that most municipalities do not report state aid for spatial projects, this map layer represents just a fraction of the potential impact of the policy.

Public procurement map layer

On 21 January 2014, there were 1793 active EU tenders on the Aanbestedingskalender.nl website, of which more than 300 involved 'works' such as infrastructure or spatial development projects that could not be assigned an exact location. Of course, it is not practical to display all projects tendered since the year 2000, as was done with state aid. A selection was therefore made of 'works', then categories relating to spatial development (in order to exclude the many infrastructure projects difficult to map out). This resulted in 79 cases, most of which relate to the installation of sewage systems and road construction. Eventually, 25 projects were found to be relevant in terms of spatial planning and displayed on the map with an icon.

Table 3.1
TEN-T in the Netherlands

Project number	Location/description	Study / work	EU contribution (x 1000 euros)	EU contribution (%)	Member States (no.)
2011-NL-94111-s	Lek Canal	s	912	50	2
2011-NL-94116-p	Princess Beatrix sluice	s	2147	50	1
2011-NL-93042-p	A2 Tunnel Maastricht	w	5000	10	1
2011-NL-93022-s	Corridor GZN	s	3750	50	1
2011-NL-91116-p	Maasvlakte II	w	5000	10	1
2011-NL-60001-p	Zevenaar/Emmerich	w	2050	50	1
2011-EU93076-s	Terneuzen sluice	w	3925	50	2
2010-NL-93302-s	IJmuiden sluice	s	1746	50	1
2010-NL-92227-s	Maasvlakte connection	s	1476	50	1
2010-NL-92226-s	Zevenaar third phase	s	802	50	1
2009-NL-00072-e	Port of Amsterdam	w	3092	10	1
2009-NL-00010-e	A2 Tunnel Maastricht	w	15000	10	1
2007-NL-60310-p	Betuweroute Rotterdam 48 km	w	4500	50	1
2007-NL-60060-p	Kijfhoek and Zevenaar 62km	w	4650	50	1
2007-NL-18010-p	Maasroute improvement	w	74750	20	1
2007-NL-05020-p	Spanningseiland Betuweroute	w	6660	20	1
2007-EU24090-s	Iron Rhine	s	2631	50	2
2006-NL-91102-s	Bottlenecks A2, tunnel	*	*	*	*
2005-NL-201D-p	Rotterdam CS renovation	w	4000	5.53	1
2000-NL-1109-p	Ketelmeer-Kampen waterway	*	*	*	*
Priority project 2	High-speed rail PBKAL	s	8000**	*	5
Priority project 5	Betuweroute	s	*	*	2

**Unknown **Van Ravesteyn and Evers (2004: 53)*
Source: http://tentea.ec.europa.eu/and/ten-t_projects/ten-t_projects_by_country/netherlands.htm

3.3.5 Transport policy

The 'freedom of movement of people and goods' is one of the cornerstones of the European Union. DG MOVE/ Transport is the Directorate-General responsible for ensuring this. Much transport policy focuses on standardisation and liberalisation with the aim to create a single EU transport market. EU Policies in this area include promoting competition in rail transport, establishing EU safety standards and systems, promoting passenger rights, and so on. This policy has a very indirect impact on spatial planning. Much more direct are the investments in infrastructure through the Trans-European Transport Networks (TEN-Ts) and the Trans-European Energy Network (TEN-E). Proposals have been drawn up for the expansion of these infrastructure networks, and this will have a significant impact on spatial development (Marshall, 2014).

TENs in the Netherlands

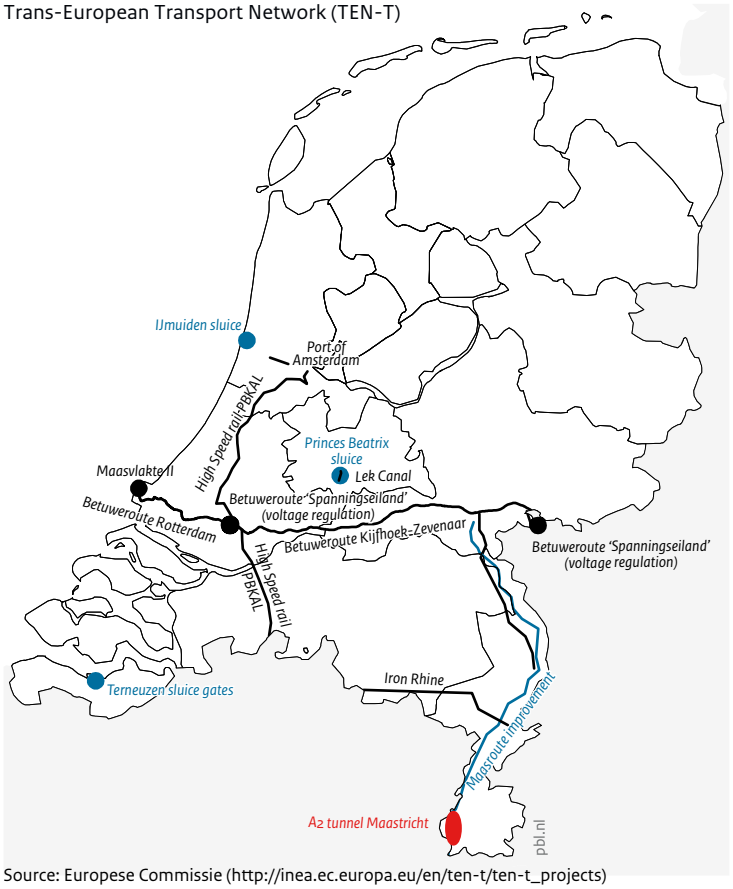
The EU aims to create a multimodal network of Member States that links the major land, sea and air routes. The TEN-T policy sets priorities for infrastructure projects and focuses on removing bottlenecks and filling 'missing links' in the transport network. It does this both to boost economic development in the EU and to provide a solution for increasing traffic volumes. The EU has also started to focus on sustainability, energy efficiency and climate change issues.

The European Union supports the construction of the TEN-T networks through various funds: its own TEN-T budget, the Cohesion Fund, ERDF and loans and guarantees from the European Investment Bank. The Netherlands is ineligible for the Cohesion Fund and only receives limited funds from the ERFD (see Section 3.3.3). The largest TEN-T projects to date in the Netherlands are the PBKAL high-speed rail and the Betuweroute. An EU executive agency was established in 2006 to implement and monitor the various projects called the TEN-T EA.

At present, the TEN-T policy provides funding in the Netherlands for projects that are less spectacular than the high-speed rail and the Betuweroute railway line.

Figure 3.14
EU transport policy

Trans-European Transport Network (TEN-T)



Source: Europese Commissie (http://inea.ec.europa.eu/en/ten-t/ten-t_projects)

TENs map layer
To give an indication of the location of EU infrastructure investments, a selection was made of TEN-T projects that lie wholly or partly in the Netherlands. Of these only those that concern a physical investment at a particular location or along a particular route were chosen. No distinction was made between EU investments for studies for a particular infrastructure project and EU investments for their implementation. As the construction of such projects can take many years, all TEN-T projects were included in the map (e.g. the PBKAL high-speed rail and the Betuweroute are also included, even though these projects were funded in the 1990s).

Many of these projects do not have an immediate spatial aspect, such as the installation of equipment on trains for the European Rail Traffic Management System (ERTMS) and projects to improve traffic management and information exchange. For projects that do have a distinct spatial character in the Netherlands, the EU mainly subsidises the costs of preliminary studies and not the actual project. Given that money is fungible (in other words euros are mutually interchangeable), these subsidies can be seen as part of the spatial investment [*impact type 3*].
The majority of the projects relate to rail transport (55% of the funding) and waterways (10%).

Plans are already on the table for the next round of TEN priority projects. These must contribute to the construction of the Single European Transport Area. Preference will go to projects that make the greatest contribution to this, such as cross-border missing links, intermodal connecting points and key bottlenecks. There is also more focus on energy efficiency and climate change (CEC, 2011: 27).

Transport
As well as investing hard infrastructure, EU policy also focuses on improving transport, particularly in and around urban areas. Current EU policy plans and priorities

are described in the 2011 White Paper on Transport, which states that the European Union aims to introduce procedures and funding to monitor (Urban Mobility Audits) and improve (Urban Mobility Plans) urban transport. This will allow urban areas in Europe to be compared. For the larger urban areas, the EU even wants to make this mandatory (CEC, 2011: 26). The impacts of this policy lie mainly in the realm of research and planning obligations [*impact type 7*].

The EU encourages sustainability in the transport sector. It aims to achieve zero-emission urban logistics through spatial planning, rail and water mobility, business practises, road pricing and technological standards. More specifically, the EU plans to create a legal and technological framework for road pricing in urban areas and to limit certain types of traffic (CEC, 2011: 27). Eventually, this could impact the relationships between various stakeholders in the Netherlands [*impact type 9*].

Maritime strategy

DG MARE aims to develop an integrated policy for European seas to resolve the competition for space at sea (CEC, 2013d: 2). What has not been achieved on land (an EU spatial policy) is now well underway at sea. In July 2014, the Maritime Spatial Planning directive (2014/89/EU) was adopted, aimed at promoting the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources. The Directive obliges Member States to draw up plans designating maritime space for different sea uses, but does not dictate the content or form of these plans. The directive is therefore mainly a procedural requirement [*impact type 7*], involving international coordination [*impact type 6*].

Research policy

As a final policy area we can consider the various kinds of EU policies aimed at making Europe more competitive globally. One example is the Research and Innovation (R&I) policy, which, among other things funds the Framework Programmes for scientific research, of which Horizon 2020 is the most recent. The budget of these programmes is considerable: in the 2007-2013 period, 41 billion euros were spent on the FP7 programme. Given its size, the Netherlands is quite successful in obtaining EU funding (second in the EU) totalling almost 3.3 billion euros, most of it going to universities and other research institutes (CEC, 2015b). Although several major research projects were oriented towards spatial planning themes, the relationship to actual planning in Netherlands was considered too weak to place this policy on the map.

3.4 Composite map of EU policies

Much of the EU policy described in the sections above can be displayed on the composite map of EU policies. First, an overview of the policies is presented along with the relevant impact type. For the sake of readability, individual policies were sometimes combined into broader categories (e.g. water policy).

The spatial distribution of the influence bears little relation to the impact types. No clear pattern can be discerned on this count. As can be seen, every part of the Netherlands is affected by area designation [*impact type 1*]: Natura 2000 in rural areas, and safety zones usually around urban and port areas. Intervention areas are also found throughout the Netherlands [*impact type 2*]; rural areas generally regard biodiversity, urban areas air quality while water quality plays a role throughout the Netherlands. Spatial investments [*impact type 3*] are performed in both urban (regional policy) and rural areas (rural development and Life+), and networks (TENs). Only Pillar 1 of the CAP and Fisheries fall in the category sectoral investments [*impact type 4*], but this is so extensive that it covers most of the country. Generic policy with a spatial impact also affects the whole of the Netherlands [*impact type 5*], although more so in urban areas. Because territorial cooperation [*impact type 6*] concerns international activities, it is not surprising that the more peripheral areas of the Netherlands are more affected by this, even though the river basins cover the whole of the country.

When superimposed, the impact types produce an indicative composite map of EU interests in the Netherlands, in other words a representation of the EU Spatial Structure in the Netherlands, despite the fact that there is no official EU spatial policy.

A few things stand out on this map. First of all, there are few 'empty spaces', or areas unaffected by EU policy (they may still be affected by impact types 7-9 however). This can place limits (in the case of regulations such as impact types 1, 2 and 5) on large-scale development projects (infrastructure/wind parks), even if such projects are initiated to comply with other EU policy (for example in the case of renewable energy). Investments (impact types 3 and 4) can also affect such projects: TENs can have a direct effect and agricultural subsidies can indirectly increase land prices.

Furthermore, the composite map divulges interesting (and possibly conflicting) overlaps between ecological objectives (Natura 2000, water quality, nitrates) on the one hand and economic production objectives (agri-cultural subsidies, TENs and structural funds) on the

Table 3.2
Policies, according to impact type

EU policy field	Impact type	Composite map
Environmental policy		
Natura 2000	1, 2, 8	Yes
Life +	3	Yes
Water policy	2, 6, 7	Yes
Nitrates	1, 2	Yes
Air quality	2, 8	Yes
Noise	7	No
Public safety	1, 7	Yes
EIA and SEA	7	No
Climate and energy	8, 9	No
Agricultural policy		
Pillar 1	4, 5	Yes
Pillar 2	3	Yes
Fisheries	4	Yes
Regional policy		
ERDF	3, 7, 9	Yes
Interreg	3, 6, 9	Yes
Competitiveness policy		
State aid	5, 9	Yes
Public procurement	5, 9	Yes
Freedom of establishment	5, 9	No
Transport policy		
TEN-T	3	Yes
Mobility	7, 9	No
Maritime strategy	6, 7	No

other. This is of course nothing new; balancing diverging interests is part and parcel to spatial planning in the Netherlands. However, the fact that this concerns EU policy does raise interesting governance issues. For example, it is more difficult to find a balance between EU standards than between national standards because of a lack of knowledge concerning the level of discretion at the level at which the policy is implemented (municipal or provincial). Furthermore, as discussed in Chapter 2, every EU policy is implemented differently. CAP, for example, is organised nationally, regional policy primarily at the regional level, Natura 2000 mainly at the provincial level and water through international water plans. This can complicate matters for those trying to find an integrated spatial solution.

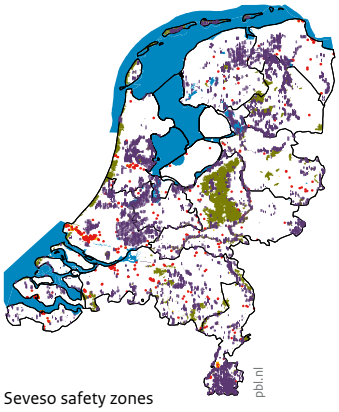
It is also important to consider EU policy that, for various reasons, could not be mapped but still may have a significant impact on spatial planning. First, generic policy affecting projects throughout the Netherlands cannot always be represented as a single map layer [*impact type* 5]. This is possible in the case of state aid to spatial projects, for example, but not for state aid relating to provincial or national policies. Developments in the social housing sector resulting from the conflict with the European Commission about state aid were not included in the map, for example. A deeper analysis could possibly reveal where housing associations changed their operations to comply with EU regulations, for example by selling off stock. Second, all spatial developments initiated to comply with EU policy [*impact type 8*] could theoretically be included on the map. The choices that are made to meet renewable energy targets, for example, will certainly have a spatial impact (for example wind parks on land). These 'unseen' types of influence are just as much a cause for tension with internal spatial policy and/or other EU objectives as the other map layers.

3.5 Tensions and solutions

Dutch opinion makers have publically bemoaned the influence of EU policy on spatial development. Professor Friso de Zeeuw, for example, recently launched a scathing attack on EU competitiveness policy: 'state aid is the latest cluster bomb on all planned and ongoing investments. After all, Europe can announce at any time that a municipality has provided unlawful state aid, or in

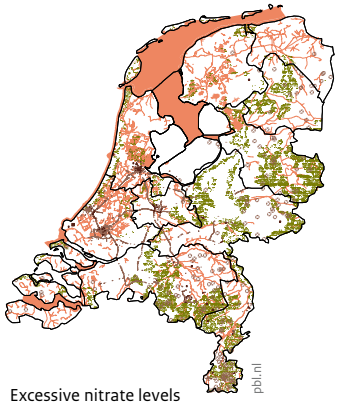
Figure 3.15
EU policy impact types

1. Area designation



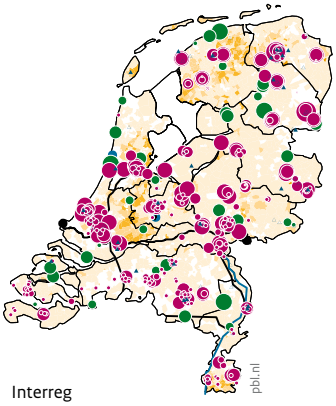
Seveso safety zones
Natura 2000
Natural handicap areas

2. Intervention areas



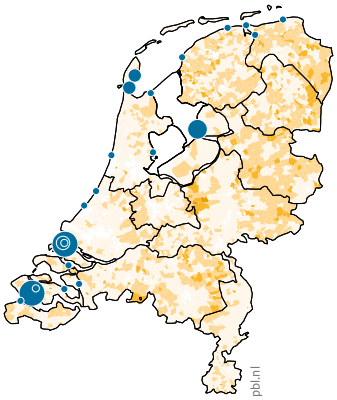
Excessive nitrate levels
Poor water quality
Poor air quality (PM_{10}, NO_2)
Areas of influence on nature areas

3. Spatial investments



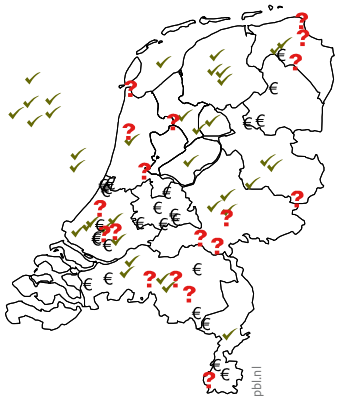
Interreg
ERDF
LIFE+
CAP pillar 2
TEN-T

4. Sectoral investments



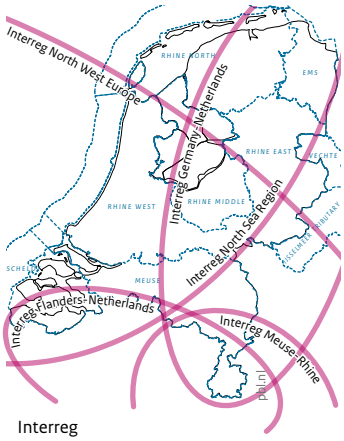
CAP pillar 1
Fisheries

5. Generic rules



Public procurement for works
State aid

6. Territorial cooperation



Interreg
River basins

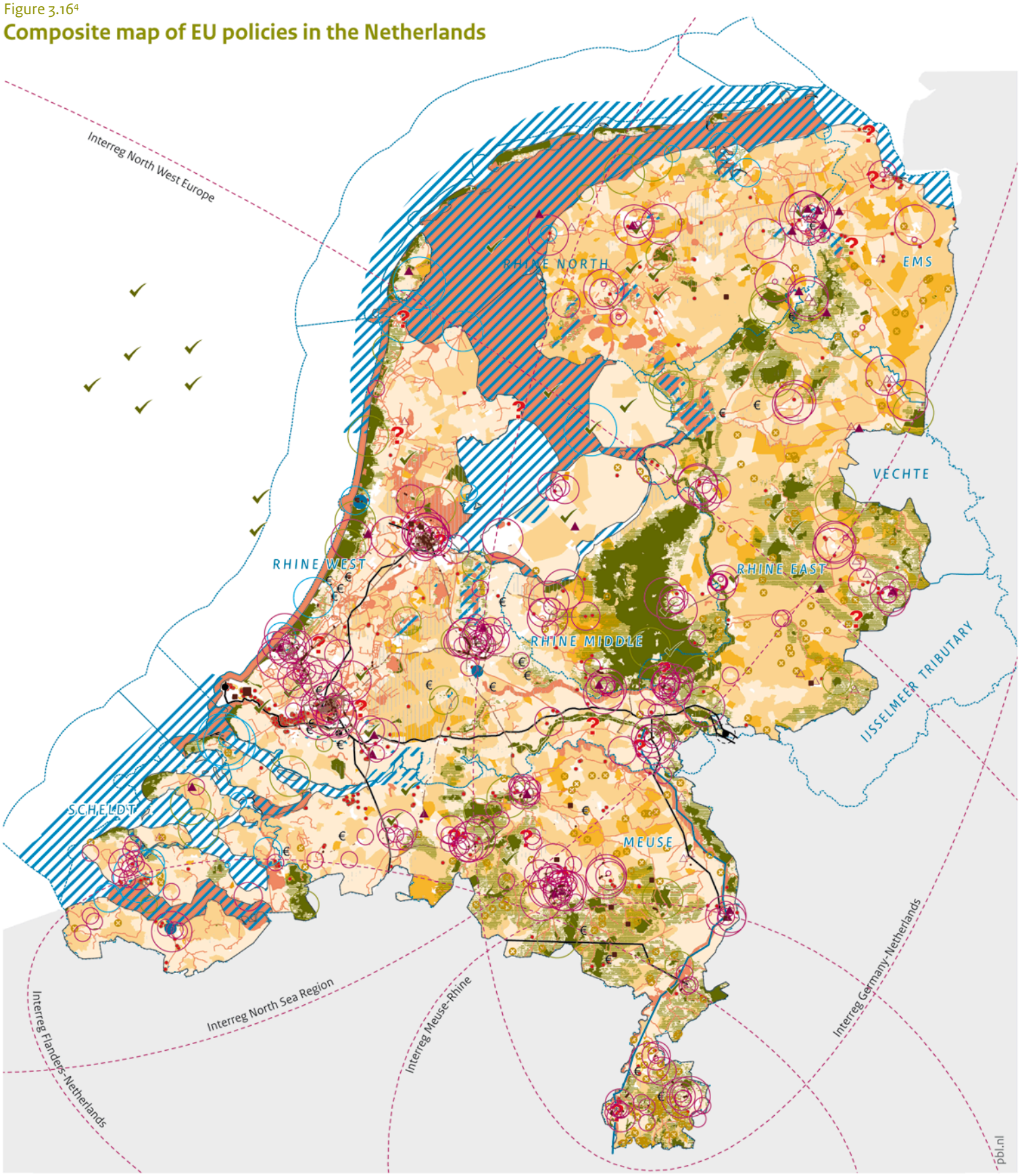
Sources: see map components

other words, a subsidy. The result is uncertainty, delays and extensive legal and advisory fees' (De Zeeuw, 2013). As far as spatial planning is concerned, the following quote is typical: 'First of all, there is an unnecessary pileup of objectives, targets, reporting obligations, thresholds, limits and compensation obligations, which involve unnecessary advisory and research costs. This is expensive and complicated. What is worse is that the European regulations result in the juridification of spatial planning. The regulations are legally binding but at the same time left open. For example, activities in a Natura 2000 area may not have 'a significant impact' on threatened species. What does that even mean?' (Corbey and Verdaas, 2007: 9). There is a clear frustration with the perceived lack of coordination and excessive EU regulations in spatial planning, as well as the lack of clarity (possibly due to the lack of legal expertise within the spatial planning sector) regarding the room for manoeuvre.

The observation that tensions can exist between sectoral policy and spatial policy or between different sectoral policies is nothing new. However, the fact that policy is increasingly implemented at the EU level is significant. The EU decision-making process is very different from the national process, and there is often very little flexibility possible after implementation (Boer et al., 2010). The tensions in EU policy are therefore very different from the conflicts between national policy objectives.

Figure 3.16[4]

Composite map of EU policies in the Netherlands



Regional policy (ERDF/Interreg/Urbact)

Subsidy (x 1 000 euro)

> 5 000
1 000 - 5 000
500 - 1 000
100 - 500
< 100

▲ Lead partner

△ Partner

LIFE+

Subsidy (x 1 000 euro)

> 5 000
1 000 - 5 000
500 - 1 000
100 - 500
< 100

Fisheries

Subsidy (x 1000 euro)

> 5 000
1 000 - 5 000
500 - 1 000
100 - 500
< 100

€ Public procurement for works

State aid

✓ No objection

? Investigation opened

Concentration of nitrates in upper groundwater

Over 50 mg/l

Air quality

PM_{10} exceeded

NO_2 exceeded

Public safety (Seveso)

Industries (Brzo)

Safety zones

Water quality

Insufficient

Nature

Natura 2000 water

Natura 2000 terrestrial areas

Areas of influence on nature areas

WFD river basin districts

Trans-European Transport Network (TEN-T)

Railway

Waterway

Road

CAP subsidy (pillar 1 + pillar 2) in euros/ha

1 - 250

250 - 500

500 - 1 000

> 1 000

LFA

Natural handicap areas

However, what exactly is a policy 'tension'? For the purpose of this analysis, it simply refers to a *possible* conflict between policies. Whether or not this leads to a real problem in spatial planning (for example by delaying a spatial project) is not explicitly investigated here. Three types of tensions are described in this section, and are based on Dutch examples. The first concerns possible conflicts between the objectives of spatially relevant EU sectoral policies. The second concerns possible conflicts between EU policies due to spatial overlap. The third concerns possible conflicts between EU sector policies and national spatial policy.

3.5.1 Intersectoral policy coherence

The tensions in spatial planning are partly the result of the fragmented manner in which EU sectoral policy objectives are developed. This can create a lack of coordination between objectives, and in some cases outright conflict (Geerlings and Stead, 2003: 194). Such 'silo thinking' is a result of the sectoral organisation of the Directorates-General within the European Commission (Dühr et al., 2010). The Secretariat-General (SG) of the European Commission has not succeeded in overcoming this silo thinking, and 'a portfolio logic seems to be overwhelmingly present within policy DGs' (Trondal and Peters, 2012: 8; Mastenbroek and Suvarierol, 2007). Even expert contributions from the Member States transpire via the individual Directorates-General (Geuijen et al., 2008).

Over the years, the European Commission has made several attempts to assess the disadvantages of uncoordinated policy; *The Costs of Non-Coordination* report (Robert et al., 2001) is probably the most well-known of these. This problem was also addressed in the White Paper on European Governance: 'The territorial influence of EU policies in areas such as transport, energy or environment should be addressed. [...] there is a need to avoid a logic which is too sector-specific' (CEC, 2001: 13). This issue has now become part of the discussion on territorial cohesion. The Green Paper on Territorial Cohesion states: 'Progress is needed to coordinate sectoral and territorial policies, even if the different policies remain autonomous' (CEC, 2008: 8), and the Territorial Agenda 2020 argues that: 'Efficient interplay of sectoral policies can be supported by their coordination at each territorial level' (Hungarian Presidency, 2011: 10). Solutions are also being developed however (Schout and Jordan, 2007). For example, conditions placed on subsidies pay increasing attention to other policy objectives (cross-compliance) and, as of 2001, every new EU policy proposal is required to undergo an Impact Assessment (IA). Although this IA procedure has been become more elaborate over the years, it will never be possible to totally remove all conflicts between EU policy objectives (Stead and Meijers, 2009).

Some conflicts are inherent. A case in point is regional policy. At a certain – abstract – level, state support for economic activities in a particular can be considered to be at odds with the neoclassical economic principles of the EU's competition policy, and in particular the ban on state aid (Colomb and Santinha, 2012). From this perspective, the structural funds can in themselves be considered a form of market distortion. It is for this reason that regional policy must also be reported as state aid. The same principle applies to other EU investments such as the TENs, fishing policy, CAP and many other subsidies at national and local level. On the other hand, a ban on a restrictive retail policy (see Section 3.3.4) can limit the access of less mobile citizens to services of general economic interest, widely regarded as an important territorial cohesion objective. Furthermore, regional policy is not always in line with environmental policy – structural funds are frequently used for developments that cannot be qualified as sustainable (IEEP, 2010), and infrastructure constructed under TEN-T can have negative effects for Natura 2000 (Byron and Arnold, 2008) and the Water Framework Directive. Given this, the lack of focus on the ecological dimension in territorial cohesion discussions is quite remarkable (EEA, 2011).

Conversely, EU environment and nature policy can also fail to take into account the economic capacity of a region. The delineation of Natura 2000 areas takes place on ecological criteria alone (the presence of rare species); economic criteria are not allowed to play a role. It is therefore possible that a region with considerable socio-economic problems will become burdened with even more problems due to the limits placed on spatial development and the obligation to attain a good conservation status. On the other hand, the structural funds can be used to a limited extent for Natura 2000 objectives.

The CAP also comes into regular conflict with other policy objectives. As stated, CAP subsidies were uncoupled from production due to interference with the global food market (i.e. competition). Until recently, most CAP subsidies were given as income support for farmers on the basis of previous production subsidies. As a result, the majority of CAP subsidies were directed to farmers in 'rich' Member States in north-western Europe. This is completely at odds with regional policy whose main objective is to close the gap between poorer and richer regions (ESPON, 2004). In addition, CAP has not always been beneficial to nature and environment objectives as subsidies are used to increase production, with the resulting negative impacts on soil, air and water quality, biodiversity and the landscape (Brouwer and Lowe, 1998: 15–16). As part of the 2003 CAP reform, income support for farmers was made dependent on achieving

Table 3.3
TENs and Natura 2000

TENs that negatively impact Dutch Natura 2000 areas	Birds	Habitats
Rhine/Meuse-Main-Danube inland waterway axis	1	15
Lyons/Genoa-Basle-Duisburg-Rotterdam/Antwerp railway axis	2	3
Total	3	17

Source: Byron and Arnold (2008)

environmental targets (cross-compliance), and this has improved policy coherence (Herbke et al., 2006). Later reforms seem to be following the same trend (Van Zeijts et al., 2011).

It is possible to detect a general increase in EU policy coherence over the years. There now more focus on other sectoral objectives in policy development. However, it is impossible to solve all sectoral conflicts with more coordination, and a call for more coordination could just be empty words: 'no suggestion for reform is more common than "what we need is more coordination"' (Pressman and Wildavsky, 1984, cited in Stead and Meijers, 2009: 318).

3.5.2 Spatial coherence

Most of the time, the kinds of tensions described above only become visible once their conflicting components converge in a particular area. Conflicting policy objectives between sectors without functional relationships are not necessarily problematic. What is problematic is an accumulation of diverging and possibly conflicting objectives at a single location. A few glaring examples include the Via Baltica in Poland and the Manikata bypass and Ghardira Bay Promenade in Malta, all of which cut through Natura 2000 areas (Birdlife, 2003, 2007). Less spectacular but just as relevant are cases where TEN projects interfere with nearby Natura 2000 protection areas. A recent study counted 379 (Birds Directive) and 935 (Habitats Directive) cases of possible interference from TEN-T priority projects (Byron and Arnold, 2008). In Spain, numerous ERDF-funded projects affected Natura 2000 areas (Byron and Arnold, 2008). Other conflicts concern cases where regional policy is used for economic activities in urban areas struggling to cope with poor air quality, or where agricultural subsidies are used in ways that put further pressure on already vulnerable local ecosystems. On the other hand, an SEA can draw attention to such conflicts before they become a problem, something which happened regarding a proposal for a high-speed railway line in Slovenia/Italy. This gives the opportunity to adjust or cancel the project (Peterlin, 2007).

One of the main aims of spatial planning within the comprehensive integrated approach tradition, the Netherlands included, is to achieve coherence between sectoral objectives (Stead and Meijers, 2009: 329). This section reflects on the extent to which an accumulation of spatial problems can be seen in the Netherlands. A few areas are then discussed where potential spatial tensions are visible on the composite map.

In the Netherlands, the Veluwe is the largest unbroken Natura 2000 area on land. In addition to the Natura 2000 areas themselves, there are large swathes of land in the vicinity affected by Natura 2000 policy either because of the likely presence of rare species or because they are part of the same ecological system. A remarkable number of agricultural subsidies are issued within Natura 2000 areas and even more in the proximity of these areas. In particularly, subsidies received by farmers in Barneveld and Nijkerk near the Veluwe are among the highest in the Netherlands. The bulk of CAP subsidies are not used for rural development but for increasing agricultural production. The map also indicates that the water quality south of nature reserve De Nulde, near Putten, is below EU standards. Finally, EU subsidies have been granted for the 'sustainable business park' Stuttersveld Zuid, while the air quality at the nearby A12 motorway does not meet EU standards.

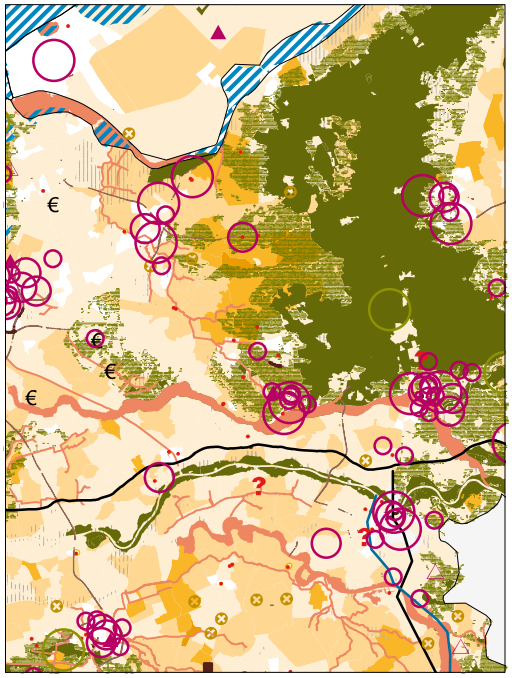
Spatial conflicts can also be seen over larger distances. An example can be seen in the north of the Netherlands, where the province of Groningen promotes industrial development in Eemshaven – developments that are also supported by the EU, incidentally. These developments, however, may pollute residential and nature areas elsewhere, such as the Drents-Friese Wold Natura 2000 area on the border between the provinces of Drenthe and Friesland. Finally, the policy objectives of the WFD and Natura 2000 tend to reinforce one another. Even so, they can conflict in the case of spatial developments that improve water quality but disturb habitats. In such cases, Natura 2000 usually takes precedence over the WFD.

Despite such examples, the lack of EU policy coherence does not seem to result in significant problems.

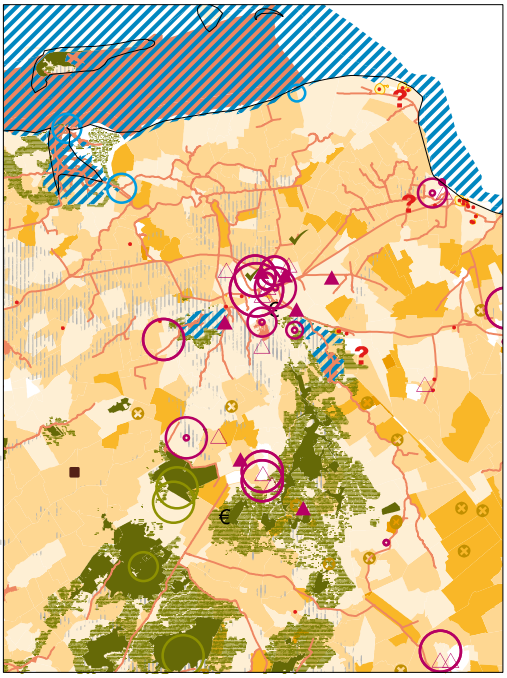
Figure 3.17

Overlapping EU policies (composite map detail)

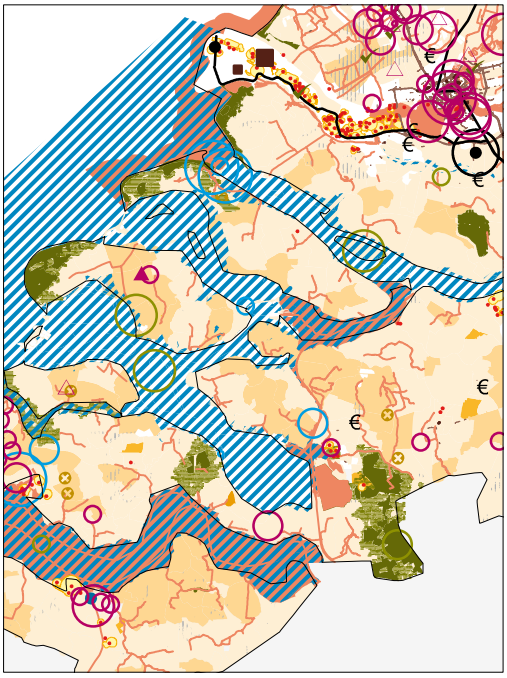
Eastern Netherlands (Veluwe and river areas)



Northern Netherlands (Groningen and Drenthe)



South-western Netherlands (Zeeland)



Spatial investments (ERDF, Interreg, LIFE+)

Excessive nitrate levels in upper groundwater
- Over 50 mg/l

Competition policy
- € Public procurement

State aid
- ✓ No objection
- ? Investigation opened

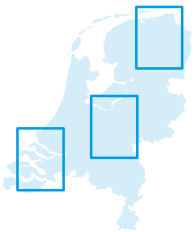
Trans-European Transport Network (TEN-T)
- Railway
- Waterway

CAP subsidy (pillar 1 + pillar 2) in euros/ha

1 250 500 1 000

Nature
- Natura 2000 marine areas
- Natura 2000 terrestrial areas
- Zones of influence on nature areas

Poor air quality
- PM_{10} exceeded
- NO_2 exceeded



Source: see composite map

The accumulation of policies is not completely random but usually follows the urban/rural pattern. Regional policy, air quality and state aid are concentrated mainly in urban areas whereas water quality, nitrates, nature and agriculture policy accumulate in rural areas. When provinces were queried on this matter in the focus groups, they responded that the lack of spatial coordination in EU policy is not problematic, as conflicts can generally be resolved in planning practice. This confirms the findings of Zonneveld et al. (2008) who examined this matter for large-scale development projects.

3.5.3 Coherence with Dutch spatial policy

In Dutch planning theory, spatial planning is often described as a method of coordination without a substantive objective of its own (i.e. a 'facet' rather than a 'sector'). According to this view, planning simply attempts to balance various social, economic and ecological objectives and seek optimal solutions for competing land-use claims (Voogd and Woltjer, 2010). This explains why spatial meta-objectives are vaguer and more abstract (e.g. spatial quality, efficient/sustainable use of space) than policy fields that aim to encourage economic growth, improve environmental or educational quality or protect consumers. Of course, spatial policy may aim to meet specific objectives but these can – other than most sectoral objectives – change dramatically over the years. For example, Dutch national spatial policy initially implemented an urban dispersal policy in the 1960s, then 'concentrated deconcentration' in the 1970s, followed by a compact city policy in the 1980s and 1990s (Van der Cammen et al., 2012).

Conflicts of EU sectoral policies with Dutch spatial policy can arise with regard to both the meta-objectives as well as at the operational level. EU policy can make it difficult to balance policy objectives properly and thus inhibit an optimal solution, which is the meta-objective of Dutch planning (Zonneveld et al., 2008). Secondly, EU policy can hamper substantive spatial policy. This is of course nothing new; conflicts between spatial and sectoral policy have always existed. Long before the commotion about Natura 2000 and EU air quality policies delaying spatial development projects, Bartelds and De Roo (1995) drew attention to conflicts between environmental and spatial policy (the compact city policy).

When examining the objectives of EU policies and Dutch national spatial policy, a first impression is that there is less hardly any conflict. One reason for this is that the latter has largely been decentralised (IenM, 2012). For this reason, tensions with earlier national policy and possible provincial policy are also included.

- *Nature and environmental policy:* Natura 2000 policy has always been consistent with the planning protection provided under the National Ecological Network (EHS), which covers virtually all Natura 2000 areas. In this sense, there are no tensions between EU and national policy in terms of geographical distribution and land use. There are however important differences in nuance. The protection regime of the EHS takes a broader approach (focusing not on the conservation of a few species but on the area in general, including species that not protected under Natura 2000). The instruments of the EHS are also broader and less obligatory than those of Natura 2000. The EHS also lacks the obligation to provide the burden of proof in advance, which is a crucial element of Natura 2000. The more specific and strict nature of Natura 2000 means that the EHS and Natura 2000 policies are not identical but complementary.
  The same applies to environmental policy: the ends are same, but the means can be different. It should also be noted that the Netherlands attaches greater importance to source policy (e.g. cleaner cars) than other (e.g. car-producing) countries. Coherence is also achieved by the fact that many national regulations are European in origin.
- *Regional policy:* the main aim of EU regional policy is to close the gap between the richer and poorer regions of Europe. Dutch economic policy, does exactly the reverse since 2000: it aims to support stronger rather than weaker regions and sectors. Since 2006, no Dutch region has been eligible for ERDF funding for convergence, which has removed the conflict between policy objectives on this point. The only ERDF funds received by Dutch regions (innovation and employment) are consistent with the national 'top sector policy' framework. Interreg B and C are also consistent with top sector policy and the SVIR, even though these programmes were drawn up in 2007 when the National Spatial Strategy was still in force. This applies in particular to the Dutch participation in Interreg water and energy projects and to a lesser extent to agro-food and life sciences (Mispelaar et al., 2012: 31–32).
- *Competition policy:* although the main objectives of competition policy are the same at the EU and national level, they can conflict now and again, for example with regard to spatial planning. State aid and public procurement rules can hinder spatial development (particularly in the case of non-compliance). The discussion whether the sustainable urbanisation procedure and provincial retail policy breach EU competitiveness policy is also a source of tension.

– *Transport policy*: it is impossible to disentangle EU and national interests as far as the TENs are concerned. The high-speed railway line was considered an important link in the EU high-speed rail network and necessary for the position of the Netherlands as an international logistic hub. National interests played even more of a role in the construction of the Betuweroute railway line, which was more of a cross-border than an EU project. The focus of the TENs on railways in the western part of Europe does not really match national priorities, which are more focused on roads. At worst, EU policy is complementary rather than at odds.

3.6 EU policy coherence in Hungary

Every Member State can in theory be faced with conflicting EU policies. The choice of Hungary as a case study is not premeditated and could have fallen on any other Member State.[5] Although there are some similarities between the Dutch and Hungarian planning systems (ESPON, 2006; Salamin and Czira, 2011), the situation in Hungary differs from that in the Netherlands, both socio-economically, administratively and spatially. Here, the logic of the Spatial Structure is applied to the case of Hungary and an attempt made to analyse multiple EU policies in a single area. Finally, a comparison is drawn with the Netherlands.

3.6.1 Hungary in the European Union

The geographical, institutional and socio-economic position of Hungary is very different from that of the Netherlands. This landlocked region in the middle of the European continent has a very different history from that of the maritime Netherlands. The many decades of Communist leadership following World War II sets it apart from the Dutch case. In addition, whereas the Netherlands is one of the founding EU members, Hungary only recently joined the EU. This had significant consequences for the country, as the public administration and legal system had to be radically changed to fit the EU system and comply with regulations and ensure eligibility for the various funds. EU membership gave various policy sectors a new podium and resources for their ambitions, and participation in various international partnerships has provided Hungarian policy sectors with the opportunity to translate their visions into EU concepts and frameworks. Other than in the Netherlands, regional policy – and in particular ERDF subsidies – have played an important role.

3.6.2 Conflicting aims on the Danube

The 417 kilometre stretch of the Danube flowing through Hungary can be considered a policy laboratory over overlapping interests. It is simultaneously an area with much potential for economic development, a valuable habitat for rare species, a relatively polluted source of water and one of Europe's main waterways (Hardi, 2012: 25). EU membership may have intensified diverging ambitions on the Danube, but these are certainly not new.[6] These ambitions and the corresponding EU policies are described in the following sections.

Transport

A transnational Danube strategy was recently drawn up, following the example of the much-praised strategy for the Baltic Sea macroregion. Like that strategy, existing EU subsidies were allocated towards new objectives rather than allocating new resources. One of the ambitions of the Danube strategy is to improve mobility and multimodality of the inland waterways (EUSDR, 2012: 8). Water transport is seen as a cheap form of cargo transport, even when environmental and safety considerations are taken into account (CE Delft et al., 2011: 5). It is even regarded as relatively sustainable (Rohács and Simongáti, 2013). The Rhine/Meuse-Main-Danube waterway is included in the list of 30 TEN-T priority projects (no. 18).

Calculations (VITUKI, 2009) show that the current volume of cargo transport on the Hungarian section of the Danube accounts for only 10% of capacity. There are a few shallow sections that form serious bottlenecks for large vessels. Resolving these issues would allow much more water transport to take place on the Danube, resulting in significant economic benefits but high environmental costs.

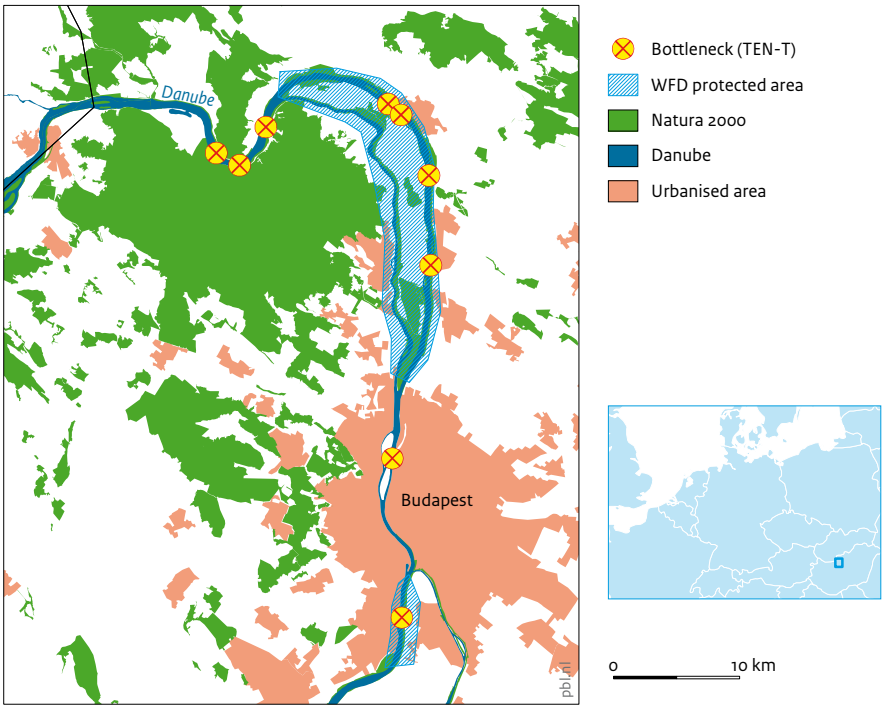
Nature

The Hungarian section of the Danube is part of the Pannonian biogeographical region, which falls partly under the protection of Natura 2000 policy. The entire stretch of the Hungarian Danube (except Budapest) and its tributaries have been designated as Natura 2000 areas. This fact makes it difficult to implement spatial development projects in and around the river. Additional water transport could result in environmental pollution and an increased risk of accidents, and more cargo transport in particular could affect groundwater quantity and quality (Kavran, 2009).

Risk of flooding

Despite reduced discharge due to a relatively dry period, water levels in the Danube and the Tisza (a tributary) have reached record levels. In addition to climate change, other factors are to blame for these high levels, particularly interventions in the water system to straighten rivers and drain marshlands (Schweitzer, 2011). Building in floodplains and raising embankments to protect these areas has increased deposition and

Figure 3.18
Overlapping EU policy in Hungary



Sources: ec.europa.eu; http://dunahajozhatosag.hu; European Commission, DG Environment, Nature and Biodiversity; Hungarian Central Directorate for Water & Environment, 2009; adaptation by PBL

raised water levels, requiring even more infrastructure. An EU project of 100 million euros was initiated to reinforce about 200 kilometres of river banks, which includes 25 infrastructure projects for the construction or modernisation of locks, bridges and floodgates. At the same time, another EU-funded project (the M6 motorway at Abony, part of the Helsinki corridor) was planned to pass through one of the Danube's flood plains.

Water quality

Both the water quality within the Danube (the amount of sludge or pollution) and the activities that take place on the river affect local water quality. As part of the implementation of the Water Framework Directive, the Hungarian Government has chosen to assign protection zones to safeguard the quality of drinking water. These zones partly overlap with the bottlenecks that need to be resolved for the TEN-T policy. The civil engineering works to improve navigation of the Danube are expected to negatively affect water quality (Kavran, 2009). Dredging may disturb the filtering capacity of the riverbanks and therefore negatively impact the quantity and quality of local water sources, and moreover conflicts with Natura 2000 objectives. Furthermore, since structural funds were allocated to install pumps to use this water for human consumption, the works could conflict with EU regional policy if, as a result, the water was no longer potable.

3.6.3 Spatial conflicts related to EU policy

The Hungarian case shows clearly that not only can sectoral policy objectives conflict, but they can also clash at a single location. In the case of outright conflict, one policy must take priority over the other. It is possible that priority can be implicit in the policy itself. In this case, no sanctions are in place for failure to comply with TEN-T policy, only a possibility of missing out on subsidies and potential opportunity costs related to transport-related activities. On the other hand, failure to comply with environmental regulations can result in a heavy fine. It is therefore no surprise that transport objectives take a back seat. Chapter 4 goes into greater depth about the question over which policy takes precedence in the case of a policy conflict.

In reflection, EU policy conflicts are sharper in Hungary than in the Netherlands. This could be coincidental, given the high environmental pressures in the Netherlands, or it could be the result of policy choices made in policy implementation. It is difficult to say whether the same choices would be made in the Netherlands as in Hungary. For example, it is conceivable that water transport would

be given more weight in the shipping-oriented Netherlands than in Hungary, where it is mainly foreign companies that benefit. Dutch transport companies would probably rather have seen Hungary choose for implementation of the TEN-T policy.

3.7 Conclusion

Dutch spatial planning often needs to take EU policies into account. Spatial policy and the assessment of spatial projects are often affected by EU rules, subsidies and governance. Using the impact type methodology, it is possible to display many EU policies or their effects cartographically. The composite map gives an idea of the range of the different EU policies that affect the Dutch territory, but it still says nothing about their actual effects on spatial development.

The importance of EU policies is increasing due to ongoing EU policymaking on the one hand and political choices made domestically on the other (see Chapter 2). The number of national interests was significantly reduced in the SVIR, resulting in a relative increase in the share of EU policy. In this sense, Dutch spatial planning is becoming increasingly European. This must not be seen as a threat – as some opinion makers would have us believe – but a fact of life. Most of the time, EU and Dutch objectives are identical. Furthermore, a more international character can give a big boost for spatial developments. In California, for example (a state with no supra-municipal spatial planning whatsoever), Federal nature policy is one of the few legal instruments for managing urbanisation at the regional level (Jonas et al., 2013). Natura 2000 can play a similar role. It is therefore important to be fair when talking about policy impacts. Even so, potential horizontal coordination problems should not be trivialised. The Hungarian case shows that uncoordinated EU policy can result in real conflict on the ground. To ensure that a comprehensive integrated approach remains possible and that optimal solutions are not obstructed, the impact of EU sectoral policy needs to be actively managed. This matter is addressed in full detail in the next chapter.

Notes

1 Such policies will then also affect the planning process, which may be slowed down (e.g. by extra research requirements) or expedited (e.g. by subsidies).

2 It goes without saying that procedural impacts also can result in substantive impacts. For example, plans that require modification because of an environmental impact report or tendering procedure.

3 For this reason, the cohesion funds (intended for less-affluent Member States to close the socio-economic gap; the Netherlands is ineligible) and the European Social Fund (stimulation of employment opportunities; the Netherlands is eligible, but the fund has few impacts on spatial planning) were excluded.

4 This figure is based on the following sources: EFRONoord: OP Noord-Nederland (http://www.snn.eu), EFROOost: OP Oost-Nederland (http://www.go-oostnederland. eu), EFRO-West: OP West-Nederland (http://www. kansenvoorwest. nl), EFRO-Zuid: OP Zuid-Nederland (http://www.op-zuid. nl/), Interreg IVA Germany-The Netherlands: Interact/KEEP (http://www.territorialcooperation.eu/keep), Interreg IVA Meuse-Rhine: Interreg (http://www.interregemr. eu/site_nl1/downloads), InterregIVA Flanders-The Netherlands: Interreg (http://www.grensregio.eu/), InterregIVB North West Europe: Interreg (http://www.nweurope.eu), InterregIVB North Sea Region: Interact/KEEP (http://www.territorialcooperation.eu/keep), Interreg IVC: Interreg (http://www.interreg4c.eu/projects/), UrbAct: European Commission (http://urbact.eu/and/our-projects), Life+: European Commission (http://ec.europa.eu/environment/life), Life+: (http://fishsubsidy.org/NL/ based on European Commission data), state aid: European Commission (http://ec.europa.eu/competition/state_aid/register), Nitrate concentrations: PBL, 2012, Evaluatie meststoffenwet 2012, Air quality: RIVM, 2013, Public safety RIVM, 2013, Water quality VenW, 2009 (WFD), Natura 2000: MNP, 2007, LFA: LNV, 2007, CAP: Alterra/WUR, 2011, TEN-T: European Commission (http://inea.ec.europa.eu/and/ten-tt/ten-t_projects).

5 In this case, a Hungarian intern at PBL, Balazs Dienes, allowed this case study to be carried out.

6 For example, the Czech Republic and Hungary drew up a treaty as early as 1977 for the construction of a power plant on the Danube. Not only would this generate electricity, but it would also reduce flooding and make water transport easier. Construction had already been going on for several years when Budapest residents objected because they believed it was having a negative impact on water quality and nature. Their protests were successful and the government withdrew support for the project in 1989. Many decades later, the plant is still a sensitive issue between the two countries.

FOUR

Process and system

The sectoral policy objectives of the European Union affect spatial planning in different ways, depending on the specific policy and the country concerned. These differences are largely due to the way in which European legislation is transposed into national law and how those laws are interpreted in planning practice. Sometimes there is a strong coupling with planning decisions and, at other times, the connection is somewhat weaker. This chapter first examines the factors influencing the degree of coupling and then show how this coupling can be 'managed'. The effects of coupling and decoupling during the implementation, application and enforcement of a few important policies are illustrated, and experiences in the Netherlands ae compared with those in Germany, followed by a number of conclusions.

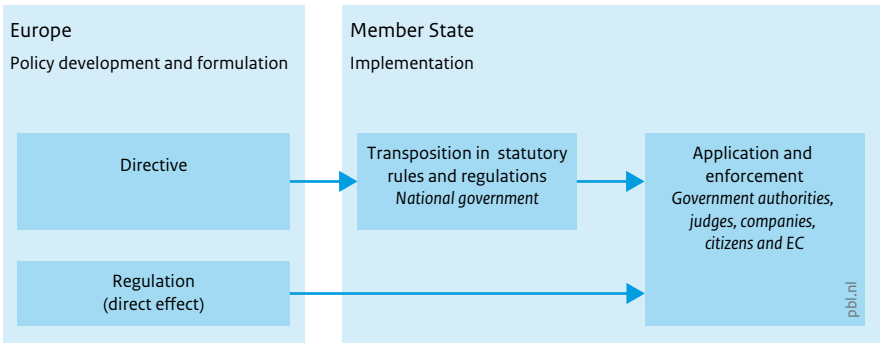
4.1 Coupling between spatial planning and EU policies

The previous chapters demonstrated that a large proportion of the Dutch territory is affected by EU policies. However, the influence of EU policies on spatial planning only becomes tangible when planning decisions are made on actual projects, land-use plans and environmental permits. For example, these become linked to EU policy when such developments affect whether one or more EU standards (e.g. for particulate matter) can be met or not and must therefore be assessed for such effects (referred to as 'impact type 2' in Chapter 3). In other cases, it is the EU sectoral policy objectives themselves that have spatial planning implications. This leads to a claim on land, such as a decision to build a wind farm to meet renewable energy targets (i.e. impact type 8). Even when European objectives in a certain area lead to the imposition of planning restrictions in advance, as in the Natura 2000 and Seveso directives, this also puts a claim on land (i.e. impact type 1). Finally, generic EU policy can become tangible in specific planning decisions if it regulates the process itself, such as rules governing public procurement (i.e. impact type 5). In all of these cases there is a distinct connection between spatial planning and EU policy. In this chapter, this connection is called the *coupling* between spatial planning and EU policy. It is the crucial mechanism that determines the influence of EU policy on the spatial planning process. Coupling, therefore, can be defined as a situation where the decision on a development or land-use proposal depends, in part, on the extent to which the proposal helps to achieve the objectives of EU policy.

This coupling and its spatial consequences vary considerably between Member States. As discussed in Chapter 1, the geographical characteristics of the Member States differ, whereas EU policy in principle is the same for all Member States. Differences in population density, economy and location influence whether the EU objectives or standards will be easy or difficult to achieve, and therefore determine the importance of EU policy objectives in specific planning decisions. But the differences in the influence exerted by EU policies also have to do with how EU policies are implemented in national legislation and planning practice. This is because when directives are transposed into national law they are 'translated' into a form appropriate to the national context. How this is done may have important consequences for planning (VROM council, 2008). The degree of coupling is therefore partly a domestic policy decision (see Section 4.2). Moreover, the strength of the coupling depends on a less visible factor, the 'system' into which the EU policy has to be transferred: the spatial planning system (CEC, 1997) or the legal system (The Dutch Council of State, 2010; see Section 4.3).

In itself, a strong coupling between EU policy and spatial planning is neither a good nor a bad thing. A strong coupling may be considered problematic if it frustrates urban development. But it can also be desirable; for example, if it helps to achieve sectoral EU policy objectives, such as better environmental quality. The coupling between planning and environmental policy was the fundamental principle underlying the Dutch ROM policy on regional planning and environment (*Regionale Ordening en Milieu*), because allowed for more creative planning solutions. A weak coupling can also be

Figure 4.1
Implementation EU directives and EU regulations



Source: Faulkner, 2005; adaptation by PBL

advantageous because of the freedom it offers to implement creative solutions.

This final chapter investigates the influence of EU policy on spatial planning, using the concept of 'coupling'. First, this concept is analysed to explain the factors influencing the strength of the coupling and how this can be modified. Section 4.2 then discusses some examples of coupling and decoupling during the implementation, application and enforcement of various EU policies in the Netherlands. Finally, Section 4.3 examines the influence of the legal and planning systems on coupling by comparing the situations in the Netherlands and Germany.

4.1.1 Factors determining coupling

The coupling between EU policy and spatial planning can be made at different times during the policy process. Figure 4.1 distinguishes between the development of EU policy at the European level and the implementation phase at the national level. The implementation phase, in turn, can be divided into a stage in which the policy is converted into national law (transposition in the case of directives) and one in which the policy is applied in planning practice and enforced via the administrative or legal system (Faulkner, 2005; cf. Zonneveld et al., 2011: 4; Tennekes & Hornis, 2008).

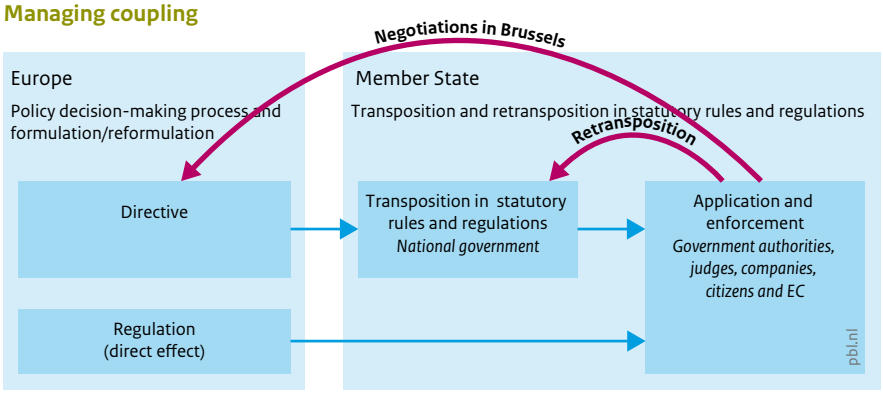
EU policy comes in a variety of guises. Here, only the directive and the regulation are discussed, because these are directly binding on the member states. A directive must be implemented in national legislation, whereas regulations have a direct effect. Coupling with spatial planning can already be established in the wording of EU legislation. For example, Article 13 of the Seveso Directive, under the heading 'Land-use planning', states that restrictions should be imposed on certain land uses in the vicinity of hazardous installations. When transposing a directive, the national government can make a strong coupling between the policy and spatial planning (either deliberately or not). Sometimes a decision is made to create a strong coupling to make the policy more effective. Sometimes the strength of the coupling is determined indirectly.[1]

The coupling may also be made during the application and enforcement phase – the decision-making on a concrete project. In application, the coupling can take the form of protocols, guidance documents, procedures, and instructions from higher tier public authorities. In many cases, the coupling is made only during enforcement of the policy. This could be the case when someone objects to a decision and appeals to the courts on the basis of the standards set down in EU policy, or when the European Commission critically examines the planning practices of a Member State, for example when investigating state aid to housing corporations or restrictive retail policies.

In short, the coupling between an EU standard or objective and a decision on a concrete project can be brought about by a wide range of actors: by the Dutch representation in Brussels, which lobbies and negotiates on EU policy texts; by the national government when transposing a directive; by a developer or public authority that wants to comply with the relevant standards and policy objectives; and also by a disgruntled citizen who appeals to the courts or the European Commission to reprimand a Member State for failing to properly apply an EU policy. According to Hessel (2010), private parties are getting more familiar with how the European system works and are making good use of this knowledge.

The degree to which EU policy is coupled with spatial planning – the strength or weakness of this coupling – is, in conclusion, determined for the most part by two factors. The first factor is the *activation* of the policy

Figure 4.2
Managing coupling



Source: Faulkner, 2005; adaptation by PBL

during a planning decision on a project. Is the EU policy used as an argument for or against the proposal? If so, at what times: for each individual project decision or only for some larger and long-term planning decisions? The second factor is how EU policy plays a part in the decision-making process – how much *flexibility* is there? To what extent can a EU rule be balanced against other interests? How easy is it to comply with the standard? And, for example, is there a built-in possibility of compensation?

4.1.2 Management of coupling

Both the activation and flexibility of the policy can be adjusted by the government to manage the strength of the coupling. In some cases, the Dutch national government has deliberately set out to weaken the coupling to gain some decision-making latitude. For example, the transposition of the Air Quality Directive into Dutch law was amended several times to relax the coupling with projects. Policymakers try to make it possible to strike a balance between the need to comply with EU standards or objectives and other planning interests. This active 'management' of the coupling can take place in anticipation, during the transposition of the policy objectives, but more often than not it is done in response to experience gained in practice. Two arrows in the diagram in Figure 4.2 illustrate this. For example, an attempt can be made to revise the national legislation (re-transposition), but Member States can also try to amend the policy via EU decision-making procedures.

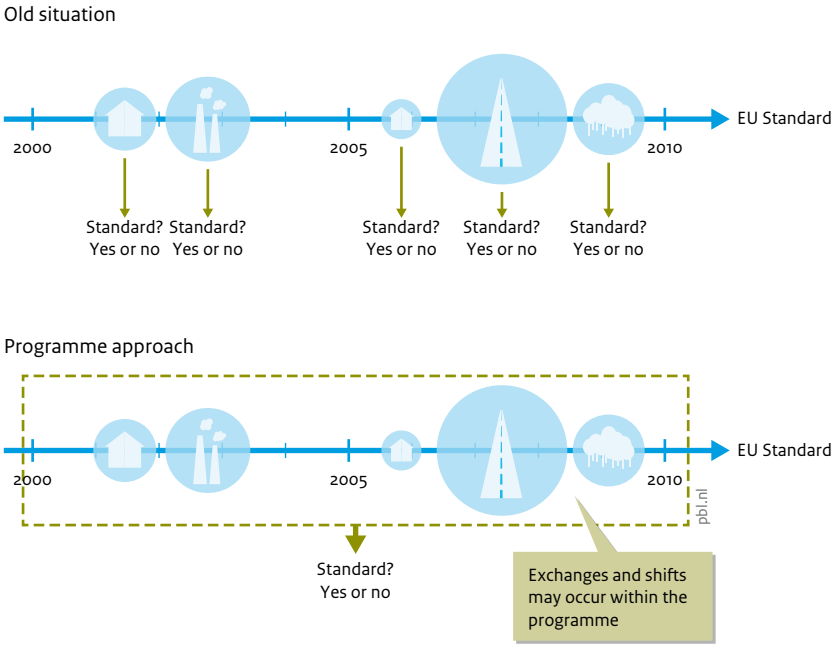
Given a conviction that either a strong or weak coupling should be made (e.g. see De Zeeuw, 2009), various strategies are available to influence the two coupling factors (activation and flexibility). The first type of strategy is designed to prevent EU policy impinging on planning decisions; or in other words, to prevent activation. This can be done be making a policy distinction or a procedural distinction, or by drawing up rules declaring the EU policy non-applicable to certain categories of planning decisions. Specifically, the following strategies may be adopted regarding activation:

- *Exemption of certain cases:* for example, by establishing thresholds to exempt small projects from the application of a standard or policy requirement. Exemptions may be tied to certain conditions, such as a code of conduct.
- *Procedural decoupling:* the standards remain applicable, but instead of being applied during the planning procedure they are activated at another time in a different procedure.
- *Decoupling from location:* for example, by changing a policy that seeks to control effects (that are by definition, location-based) into a policy that targets the source. The aim is not strictly to meet certain environmental standards in a specific area, but to tackle the sources of pollution, which may be located somewhere else entirely than the planned project, which remains unaffected.
- *Screening off:* preventing parties from involving EU policy in the decision-making process; for example, by restricting the possibilities to appeal against planning decisions (Buitelaar et al., 2013). We will return to this in Section 4.3.

The second type of strategy is to allow a *more flexible interpretation* of EU policy requirements in planning decisions. Examples of these strategies are:

- *Making objectives negotiable* with other interests: allowing EU policy objectives to be weighed against other factors. An example is issuing a permit for a project even though an environmental standard will be exceeded, because important material considerations make it unreasonable to expect the standard to be met – for example, because the best available techniques are already being used and alternatives

Figure 4.3
Programme approach



Source: PBL

would involve prohibitively high costs.
- Making it easier to *compensate* for non-compliance.
- *Reinterpretation* of a standard to enable a more flexible application.
- *Offsetting impacts* within a particular area: offsetting the adverse environmental impacts of one project against the environmental benefits of another project, as long as the net outcome is an overall improvement in the environmental conditions within that area.
- *A programmatic approach*: this entails a broadening of the offsetting impacts approach. A programme contains not only a plan for one particular project, but multiple projects together with generic measures, such as pollution prevention. The total package is aimed to achieve the EU policy objective (e.g. complying with an environmental standard) within a specified period of time, but the key consideration for each individual project is how it fits into the total package.

The programmatic approach is a way to both limit activation and gain flexibility in the application of EU policy. It is a wide-ranging method that requires substantial monitoring, but it is gaining in popularity. Within a programme, a worsening of one environmental parameter can theoretically be compensated by an improvement of another. Moreover, a programme is drawn up once every few years, rather than for each planning decision separately, which means the EU rules are activated only once every few years. This is illustrated in Figure 4.3. An important caveat is that the European Commission grants its approval.

In addition to decoupling strategies, governments can equally opt to increase the coupling of planning decisions to EU policy. These coupling strategies aim to show that EU policy applies to the decision-making process at hand, and that there is no discretion in decision-making, or (looked at the other way) that sectoral EU policy cannot be divorced from spatial planning policy.

4.2 Coupling and decoupling pathways

The process of transposing, applying and enforcing objectives and standards has been employed to either tighten or loosen the coupling between spatial planning and many EU policies. This section examines five policy areas to illustrate different 'pathways', from strongly coupled to decoupled and vice versa. Table 4.1 illustrates the pathways discussed here. Section 4.3 discusses the influence these system characteristics can have on the degree of coupling.

Table 4.1
Decoupling pathways

	Degree of coupling			Management of the coupling
Example policy	**EU text**	**Transposition**	**Application/Enforcement**	
Natura 2000	High	High	---	Decoupling via re-transposition
Air quality, particulate matter	---	High	High via enforcement	Decoupling in new EU text Decoupling and coupling via re-transposition
Water Framework Directive	---	Low	---	Stronger coupling via enforcement and application
Renewable energy	---	High	Increasingly stronger coupling via application	---
Public procurement	---	---	Coupling via enforcement	---
State aid	---	n/a	Coupling via enforcement	---

4.2.1 Natura 2000: strong coupling made weaker in directive text and transposition, followed by revisions to weaken coupling

European nature conservation policy is a good example of an EU policy where coupling with spatial planning was already written into the text of the directive. The Birds Directive (1979) and the Habitats Directive (1992) constitute the Natura 2000 policy for establishing a network of protected areas within Member State territories. Article 4 of the Habitats Directive requires the European Commission to establish a list of sites of Community importance, the Natura 2000 areas. Conservation objectives must be formulated for all habitat types and all species present at these sites. Article 6 states that any plan or project likely to have significant effects on a Natura 2000 area must be subject to an appropriate assessment, and that a permit is required.

In the Netherlands, these directives have been implemented in the Flora and Fauna Act 2002 and the Nature Conservation Act 1998. In the end, the government submitted a final list of 162 Habitats Directive sites to the European Commission. The transposition of the directives into national law established a very strong coupling with spatial policy. First, the sites themselves are to be protected in a land-use plan, and all land-use plans must take account of the conservation management plans for Natura 2000 areas and as well as the outcome of any environmental impact assessment prepared for proposals that could affect these sites. Proposals for a development or activity within the designated areas are to be assessed in a permit procedure, exemption procedure or approval of a code of conduct; positive decisions are often conditional upon mitigating measures and sometimes on compensating measures, but the poorer the conservation status, the more difficult compensation becomes.

The obligation to assess activities against the conservation objectives is not limited to the sites themselves. In the Netherlands, for example, the conservation objectives cannot be achieved via the Natura 2000 protection regime alone (Backes et al., 2011), which is why, under EU law, it is necessary to protect and restore species and habitats outside these sites. In turn, this can have implications for the development possibilities in those areas. 'External impacts' on Natura 2000 areas, therefore, have to be taken into account, which means that activities outside a Natura 2000 area must also be assessed if these are likely to affect that area (these were marked as 'areas of influence' on the composite map in Chapter 3). In principle, these activities may be located at any distance from a Natura 2000 area, but in practice limits are imposed on these distances (Jaspers et al., 2010). As the Dutch National Ecological Network (NEN) includes many areas outside Natura 2000, it is part of this additional policy needed to meet the objectives of the Birds and Habitats Directives.

Management of the coupling

Over the years, the conditions under which a permit or discretionary permit (exemption) is issued have been subjected to various minor and major alterations. On balance, these amendments have made the coupling weaker.

The first type of amendment concerns proposals for which a permit is needed. Under the Crisis and Recovery Act, which came into force on 31 March 2010, existing uses are exempt from the requirement to obtain a permit (Backes et al., 2011), because before that date there were many cases of conflict with existing land uses. Exempting existing uses from requirement to obtain a permit means that the EU regulations are no longer activated for these cases.

There are also other forms of *exclusion*. For example, changes to the legislation have been made so that applications for exemption for a project do not have to be made separately for each protected species. Since 2005, the Flora and Fauna Act divides protected species into three categories: general species (Table 1), other species (Table 2) and strictly protected species (Table 3). A general exemption can be obtained for the first group. Exemption for Table 2 and Table 3 species is conditional on there being an approved code of conduct for the sustainable management and use of the area. These codes of conduct are approved separately, and at a different time, from the planning permission for the project itself (*procedural decoupling*). If there is no approved code of conduct, an application may be made for a discretionary permit. For Table 2 species a simple assessment must then be made to see if the planned activities will endanger the conservation status of the site. For Table 3 species a more elaborate assessment is required to show that there is no alternative to the planned activity and that the activity falls within one of the categories of activity or interests previously established by an order in council. In a later amendment, the list of strictly protected species was restricted to those protected under EU law; the 'national gold-plating' was removed, reducing the number of cases for which it will be necessary to apply for an exemption.

Under the Nature Conservation Act (which came into force in 2005), the planning application must contain a description of the consequences of the initiative for the conservation objectives of the site. If the site is likely to be damaged by the activity, the proponent must carry out an AIC assessment: are there Alternatives, are there Imperative reasons of overriding public interest, and what Compensatory measures are possible? The initiative may proceed if there are imperative reasons of overriding public interest for which there are no alternative options, and then only on condition that compensation measures are taken for the loss of nature conservation value. The question of *how* compensation can take place is important for the strength of the coupling. Compensation is easier and cheaper for the NEN than for Natura 2000 areas. Financial compensation is possible for the NEN; for example, in the form of a contribution to a fund that will be used at a later date for nature conservation measures. This is not possible for Natura 2000 areas, for which compensation can only be made in kind (Witteveen and Bos, 2009).

Despite the strong coupling between nature policy and planning decisions, many urban developments are able to go ahead (Van Veen et al., 2011). The main conflicts are with farming because of the nitrogen deposition (Backes et al., 2011). Between 1992 and 2010, the nitrogen surplus in Dutch agriculture fell by almost 50% as a consequence of measures taken to comply with the EU Nitrates Directive, such as applying manure to the land during a shorter period of the year and in lower quantities (Bauman et al., 2012). But despite these measures, nitrogen remains one of the most persistent problems for environmental quality as well as nature conservation. For this reason, farming activities cannot be permitted inside protected areas and in the vicinity of these areas (external impacts). Even the construction of a road in the surrounding area can have an adverse impact on a protected area because of the increase in traffic.

This coupling has been further strengthened by a decision by the Dutch courts. The Directive and the Dutch legislation refer only to 'significant effects' of activities on the quality of protected areas. The courts, however, have interpreted critical deposition values – according to the Directive, a value below which no damage occurs – as a limit value. In this interpretation, a measured value higher than the critical deposition value is deemed damaging and the activity, therefore, cannot be permitted. In essence, a value intended to be of indicative scientific value has been transformed into a legal assessment value (Taskforce Trojan, 2008: 24), in effect a *reinterpretation of the standard* leading to a stronger coupling.

Because nitrogen deposition continues to hinder compliance with the nature conservation directives and the nitrate directives, the national government introduced a nitrogen reduction programme, the Integrated Approach to Nitrogen (PAS). This programmatic approach to controlling nitrogen deposition marks a significant decoupling of the Nitrate Directive. Under this approach, individual activities are permitted if – when combined with generic policy and all other developments and other measures taken in the area over a certain period of time – they do not on balance lead to an increase in nitrogen deposition. Although this approach requires a detailed nitrogen accounting and monitoring system, it has the advantage of creating room for development, because EU policy is not activated for every new initiative. Another advantage is that, during the development of the programme, various parties with interests in the area – landowners and farmers – make agreements with each other.

In conclusion, a programmatic approach weakens the coupling between EU policy and spatial planning in two ways. On the one hand, it ensures flexibility by offsetting the effects of different activities; on the other hand, it ensures that the European rules are not activated for each individual development proposal, but only every so often.

Table 4.2
Summary table*

	Activation	Flexibility
Text	Permit requirement	Designation of protection areas
Transposition	Land-use plan Permit/exemption requirement *Exclusions:* *Not applicable to existing uses;* *Different assessments for different categories of animal species* *Procedural decoupling:* *Approval of code of conduct*	
Application and enforcement	External impacts: areas in the vicinity of protected areas also subject to nature conservation regulations *Programmatic approach:* *Integrated Approach to Nitrogen (PAS)*	Where the NEN is affected: financial compensation is possible *Reinterpretation of the standard:* *Courts interpret critical deposition value as a limit value* *Programmatic approach:* *Integrated Approach to Nitrogen (PAS)*

* *italics = management of the coupling*

4.2.2 Air quality: strong coupling via transposition and enforcement, thereafter revisions to weaken coupling

The EU air quality directives – in particular the daughter directive on particulate matter – are a good example of EU policy for which the coupling was built in during the transposition into Dutch law and subsequently strengthened in its application and enforcement. Various amendments – both in the transposition and in the EU regulations themselves – were needed to weaken the coupling.

In 2001, the order in council on air quality was revised to comply with the daughter directive. In contrast to most Member States, the Netherlands adopted a general rule that government authorities must take the limit values into account when making planning or permit decisions. Each development project had to be assessed to establish whether it would cause emissions in excess of the limit values for particulates and NO_2 (or lead to an exceedance of those limit values). In addition, an assessment had to be made of whether the development would lead to an increase in the number of people exposed to unhealthy concentrations of these substances. A large number of proposed developments came before the Council of State, and because it could not be demonstrated that they could comply with the required environmental standards, they were suspended. In the public perception, the particulate matter problem soon became equated with the perception that the EU had put the Netherlands in a state of 'lockdown'.

The coupling was particularly strong in the Netherlands because the EU rules were activated much more frequently than in other countries. The reason for this lay both in the nature of the Dutch administrative system (including recourse to the courts; see Section 4.3) and in the transposition of the directive, which required every project to be assessed independently (Germany, in contrast, employed a threshold). Moreover, the Council of State interpreted the standard as an absolute limit which could not be balanced against other interests, whereas the United Kingdom, France and Belgium did not treat it as an absolute limit at all (Backes et al., 2005; Backes, 2006). The impact of the particulate matter standard on planning can therefore be seen more as a consequence of the transposition of the EU policy into Dutch law than of the EU policy itself (VROM council, 2008).

Management of the coupling

Over the years, this tight coupling has been relaxed in a number of steps. Amendments to the transposition and the EU legislation has resulted in more projects being approved, a restriction of the field of application of the policy leading to less frequent activation, and an increase in decision-making latitude.

The Air Quality Decree 2005 strategically omitted the 'natural' background concentration of particulate matter (sea salt aerosols) in the calculation of the ambient concentration to be tested against the EU standard, making it possible to comply with the standard at numerous locations throughout the country. In addition, the 'standstill principle' was abandoned. This principle

Table 4.3
Summary table*

	Activation	Flexibility
Text		*Reformulation of the standard at EU level:* *Sea salt aerosols not included*
Transposition	Assessment for each government decision *Exclusions:* *Principle of applicability* *Principle of non-significance* *Inclusions:* *Sensitive land uses (stronger coupling)*	*Reinterpretation of the standard:* *Abandon standstill principle*
Application and enforcement	*Programmatic approach:* *National Air Quality Cooperation Programme (NSL)*	*Offset project impacts:* *Offsetting project impacts* *Programmatic approach:* *National Air Quality Cooperation Programme (NSL)*

* *italics = management of the coupling*

states that even in situations where the air quality complies with the standard, projects which lead to a deterioration in air quality (i.e. bring concentrations closer to the limit value) may not proceed. Dropping this provision is tantamount to a *reinterpretation of the standard*. Also, *offsetting* the effects of one project against another was permitted. This means that, as long as it can be demonstrated that the net effect of all the projects in an area is an improvement in air quality, each individual project does not have to comply with the standard.

Moreover, the principle that projects that do not create additional air pollution but do increase the number of people exposed to higher air pollution levels must comply with the limit values was also scrapped.
This principle was not adhered to in other Member States either (Backes, 2006: 11). In 2007, in anticipation of the 2008 directive, the principle of applicability was introduced (*exclusions*). This principle (which is also applied in Germany) states that, since the purpose of the policy is to protect human health, the limit values do not have to be met where people are only present for short periods of time.

At the same time, a series of other fundamental revisions were made. An example of these is the exemption for projects that 'do not contribute significantly' to the concentration of a particular substance in the air. This was initially less than 1% of the limit value, but was later increased to 3% of the limit value (*exclusions*). On the other hand, the publication of the order in council on land uses sensitive to air pollution in 2008 tightened the coupling between EU policy and planning decisions for these land uses. This regulation imposes restrictions on the building of new schools and similar public buildings near motorways and other major roads.[2]

The most important decoupling was introduced by the National Air Quality Cooperation Programme (NSL). The NSL is a complete package of measures to improve air quality, including source control measures. It incorporates all 'significant' projects and all local and regional measures included in regional programmes, in addition to national government projects and measures. The regional programmes are designed to offset or sufficiently compensate for any increase in air pollution resulting from a project. This means that a project included in the NSL does not have to be assessed individually for compliance with the limit value. Projects not included in the NSL but that do make a 'significant' contribution to atmospheric concentrations of air pollutants must be screened for possible effects on air quality. If this shows that the project will have an adverse impact on air quality, a more detailed study of its effects must be made.

4.2.3 Water Framework Directive: weak coupling via transposition, possible stronger coupling via enforcement

The Water Framework Directive (WFD) is a good example of an EU policy for which a weak coupling with spatial planning was made during its transposition into Dutch law. When transposing the WFD, the Dutch legislature – with the experience of the daughter directive on particulate matter in mind – wanted to avoid a strong coupling between water quality standards and planning decisions. To this end, planning approval for proposed developments or activities that could affect water quality does not depend directly on compliance with the WFD standards for the relevant water bodies: 'A deliberate decision was made to avoid any legal link between the WFD objectives and decisions made under the Spatial Planning Act via environmental quality standards under

the Environmental Management Act (known as coupling)' (Arbouw et al., 2009). This is a *procedural decoupling*.

Nevertheless, there are some coupling mechanisms between the WFD water quality standards and planning decisions via other procedures. First, if a proposal must be accompanied by an environmental impact statement (EIS), the effects on water quality can be assessed in that report. This coupling is weaker than for particulate matter, for one thing because there is no obligation for the planning authority to choose the best environmental alternative in the environmental impact assessment. Besides, many proposals do not have to be accompanied by an EIS.

Second, the water assessment process requires the water management authority to advise the local authority at an early stage on the implications of development projects and land-use plans for water quality, as well as the consequences for its own measures taken to improve water quality (see below). However, this advice is not binding and the local authority may deviate from it in the 'water section' of its land-use plans.

There is also a coupling with certain types of proposed activities that require a discharge permit, and which therefore must be assessed for their effects on water quality. However, there is no permit requirement for 'diffuse sources' and farming activities, a problematic source of water pollutants, are diffuse sources (*decoupling from the location*). However, this source can be tackled under the directives intended especially for these activities, such as the Nitrates Directive (Backes et al., 2012: 103).

Measures and guarantees for the improvement of water quality are contained in water plans, such as the National Water Plan, the management plan for the waterways and delta and coastal waters that fall under national government responsibility, the regional water plans, and the water management plans of the regional water authorities. All these plans must take the water quality standards 'into account'. Although this wording in Dutch has less legal force than 'give due consideration to', these plans must still contain measures to comply with the water quality standards on time (Backes et al., 2012: 101). Many of these measures have to be taken 'on land', such as the construction of wetland purification systems and shoreline reedbeds to improve ecological quality, the construction of fish ladders, and the remeandering of streams and rivers. Any such measures in these plans that involve changes in land use require planning permission, which amounts to a coupling with spatial planning. However, 'As these water plans are subject to water quality assessments, it is not necessary to assess proposed new developments directly against the environmental quality standards. This is because any pollution that may be caused by the new activities will already have been accounted for in the water plan. The water plans are the vehicles for translating the environmental quality standards into the package of measures, which makes it unnecessary to couple individual decisions to the standards' (Arbouw et al., 2009). For all practical purposes, this approach is comparable with the *programmatic approach*.

In short, although a number of mechanisms are available for coupling water quality to planning decisions, the legislature made this coupling weaker than for particulate matter when transposing the directive into Dutch law because water quality in the Netherlands is generally poor. As a result, water quality management does not have much of an influence on spatial planning.

Moreover, right from the start, the Netherlands adopted a pragmatic approach by designating a relatively high proportion of water bodies as 'artificial' or 'heavily modified'. As there is no 'natural' reference point for a 'good ecological status' for these waters, the quality objective for them is a 'good ecological potential'. This objective may be based on what is feasible and cost-effective, which gives Member States considerable latitude when setting policy. The Netherlands has a much higher percentage of water bodies designated as 'heavily modified' than Germany, the United Kingdom, France or Denmark (Keessen et al., 2010). There are rivers categorised as 'natural' in Germany, but just across the border in the Netherlands they become 'heavily modified'. Initially, the Netherlands applied for a postponement of the date whereby targets must be achieved (until 2021, with the possibility of further postponement to 2027), but an additional, motivated, lowering of the targets is also possible.

Management of the coupling

During the application and enforcement of this policy, there has been a tendency for the coupling to be more vigorous in practice than intended. De Gier et al. (2007) describe how, in a court case on a farm expansion, the judge decided that it was admissible to take the influence of the activities on water quality into account, arguing that the consequences for drinking water quality had not been properly investigated. According to the principle of good spatial planning, no development or land use should be permitted if it potentially has adverse effects on human health. This does not mean that this principle also applies when there is no risk to human health, but it does nevertheless open the possibility of establishing a coupling in this manner.

Table 4.4
Summary table*

	Activation	Flexibility
Text		
Transposition	Procedural decoupling: No link between WFD targets and planning decisions under the Spatial Planning Act (but with water assessment and EIA) Decoupling from location: Source control policy (but agriculture not a source)	Many water bodies designated 'artificial'
Application and enforcement	'Programmatic approach' Water plans *Procedural coupling (stronger coupling):* *Coupling with nature policy* *Procedural coupling (stronger coupling):* *Assessment if water quality presents a threat to human health*	

* *italics = management of the coupling*

In addition, the Dutch government decided to give priority to the Natura 2000 areas in its water policy. Under other EU legislation, water quality in these areas had to meet the quality standards by 2015 (PBL, 2012: 226), which makes it possible to combine nature conservation measures with water management measures. However, the water quality standards in the Flora and Fauna Act and the Nature Conservation Act are stricter than those in the WFD. As we have seen above, there is already a strong coupling between nature policy and land-use planning, which means that the water policy for protected areas is also, indirectly, more strongly coupled with land-use planning than other areas.

4.2.4 Renewable energy: no coupling in text, stronger coupling via application

A stronger coupling than originally present in the EU text or national legislation can arise in a very different way, namely via the political process. The introduction to this chapter mentions a number of ways in which EU policy is relevant to planning decisions. In the previous cases, this link plays out primarily via quality standards against which proposals are *assessed*. The Renewable Energy Directive (2009/28/EC), however, is an example of a directive that gives rise to *claims on land* that have to be allocated via the spatial planning system.

The directive sets binding national targets for the proportion of total energy use that must come from renewable energy sources. The Dutch target has been set at 14%. The wording of the directive leaves it up to the Member States to decide how to meet their targets: 'Member States shall introduce measures effectively designed to ensure that the share of energy from renewable sources equals or exceeds that shown.' In the Netherlands, this target (together with the EU target for CO_2 reduction and energy saving) is implemented in the Clean and Efficient in 2020 programme (*Schoon en Zuinig in 2020*) (VROM, 2009). Given the geographical location of the Netherlands, bordering the sea and without any possibilities for hydroelectric power, the government has elected to obtain much of the country's renewable energy supplies from wind turbines, partly on land (Van Hoorn et al., 2010).

The decision to lean heavily on this technology implies a relatively strong coupling with spatial planning, because the feasibility of this form of renewable energy is highly dependent on location. At the same time, other interests, such as landscape and regional identity, are major considerations in the decision-making process. In the end, the competitive position of wind power compared with other sources of renewable energy depends on optimising the location of wind turbines and wind parks in relation to other land uses. Wind turbines have a large spatial impact because of their incompatibility with other functions (e.g. danger to birds, civil aviation) and because of the disturbance they cause to residents in the area and their visual impact on the landscape. Consequently, plans for wind turbines and wind parks have met considerable local resistance. This can also lead to tension between different tiers of government; local authorities and provincial governments tend to back their residents, whereas the national government is responsible for meeting the EU targets (see box on wind turbines in Chapter 2). Interestingly, what started out as a purely sectoral issue quickly became a case of integrated area-based planning.

Table 4.5
Summary table*

	Activation	Flexibility
Text		
Transposition	Deciding on wind turbines on land implies an important role for spatial planning	
Application and enforcement		*Make negotiable:* *At local level, weigh against other interests and objectives in planning procedure*

* *italics = management of the coupling*

Management of the coupling
The coupling between EU renewable energy targets and spatial planning was not made by the EU. It was made when the Dutch Government decided to achieve its renewable energy target with wind turbines on land and delegated implementation to sub-national governments. Management of the coupling is therefore a complex business involving several government authorities.

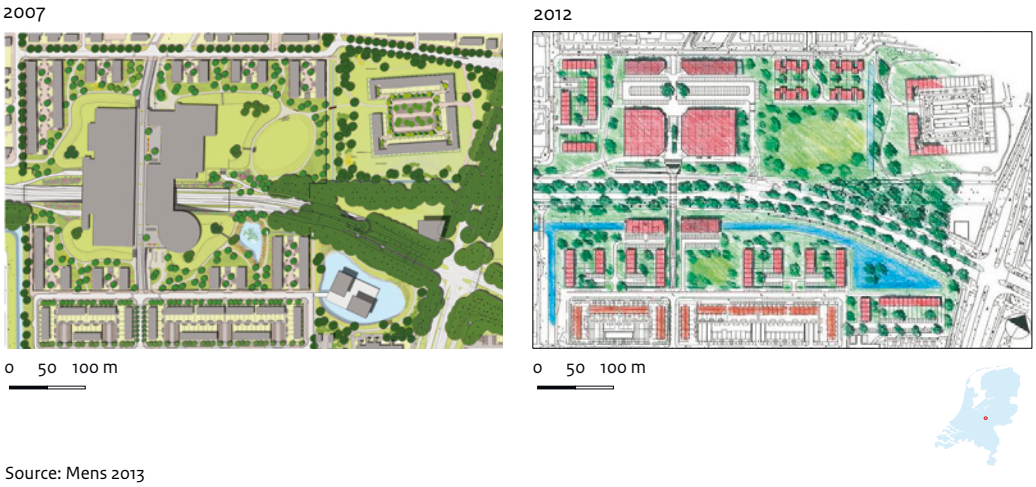
All the different sectoral claims converge in local-level planning. At that level, the national renewable energy target is no longer sacred. In practice, the coupling is abandoned, and the EU standard is *made negotiable* at the local level and weighed against objectives such as landscape protection. Because the EU sets no rules on how Member States should achieve their renewable energy targets, the government is free to choose from several possible strategies. For example, it can *re-transpose* the standard to adopt a different mix of renewable energy in which wind power on land is a smaller component of the total package (if that is technically possible). It can also choose an *offsetting approach* in which local authorities are allowed to refuse permission for the construction of wind turbines in their territories as long as they can provide the same amount of renewable energy in another way. Finally, national government can decide to *screen off* the process, for example by dealing with the project under the Crisis and Recovery Act (which has a more limited scope for appeal).

4.2.5 Public procurement: no coupling in text, stronger coupling via enforcement

EU competition policy concentrates on four key areas: monopolies, mergers, support to companies and the privatisation of state-owned companies (Colomb and Santinha, 2012). The policy makes little mention of a coupling with spatial planning, but the European Commission does make this coupling via enforcement. An example of this is the Consolidated Procurement Directive (2004/18/EC), which has been transposed via the Public Procurement Act 2012.[3] The Procurement Directive contains rules for fair and transparent procurement of major public works, supply and service contracts with the aim to ensure that lucrative government contracts are open to foreign parties. In cross-border situations (in other words, contracts for which foreign parties may also be interested), public contracts above a certain threshold (at the moment 5,186,000 euros for public works)[4] must be awarded via a European procurement procedure. Most major public works projects involving large investments in buildings and other structures fall under this legislation.

For these projects, the coupling with spatial planning is activated in two ways: by publication on the Aanbestedingskalender.nl website or by a complaint to the European Commission about a direct (in-house) award of a public contract. Once a project is published on the government procurement website, the planning and development process follows the public procurement procedure. Government authorities are then no longer entirely free to choose who to work with, because this is largely determined by the requirement to pick the most economically advantageous tender. Examples of the second type of coupling, arising from a complaint, include the municipalities of Amersfoort (Vathorst housing district), Eindhoven (Doornakkers community centre) (CEC IP/09/1478, 2009) and Ede (Het Nieuwe Landgoed) (CEC IP/11/600, 2011). In the case of Ede, the coupling led to a serious delay in the project and a completely new masterplan, which was of a lower quality because certain facilities and amenities were scrapped and mixed uses avoided (see Figure 4.4). The direct award of a contract for motorway safety barriers by Rijkswaterstaat had earlier come to the attention of the European Commission (IP/04/1294). The Doornakkers project in Eindhoven and the possible 30 million euro fine eventually went before the Court of Justice of the European Union. For technical reasons (the Directive was not yet in force when the contract was awarded), the European Court of Justice ruled in favour of the municipality of Eindhoven (*Eindhovens Dagblad* 11 April 2013).

Figure 4.4
Urban development plan 'Het Nieuwe Landgoed', Ede



Source: Mens 2013

The coupling is not limited to major works commissioned by government. EU jurisprudence shows that the EU public procurement rules can also affect everyday urban development processes. The 'La Scala decision' by the European Court of Justice against the city of Milan (Italy) at the end of the 1990s established that the right of landowners to complete a development in conformity with an approved land-use plan or planning decision (a right in the Netherlands as well) does not exempt them from complying with EU procurement rules. The 'Auroux decision' against the municipality of Roanne (France) also caused a stir; it determined that an urban development project cannot simply be cut up into smaller parts to sidestep the EU procurement procedure (e.g. by separating site preparation from construction work). In its 'Müller decision' in 2010, the European Court of Justice clarified the situations in which an area development must be considered to be 'an award of a contract' (and therefore must comply with public procurement rules). This is the case if (1) the public sector organisation has a direct economic interest in the works, (2) there is a construction obligation, or (3) requirements are imposed that go beyond the scope of planning conditions (Wolting et al., 2012: 66). These conditions apply to many Dutch urban development projects. It is obvious that EU public procurement policy undermines the traditional model of cooperation between local authorities and commercial partners on area development projects that has become established over the years in the Netherlands (Buitelaar, 2010). In 2005, the European Commission initiated proceedings against the Netherlands for failing to properly implement the directive. Although this conflict was resolved by the adoption of the Public Procurement Act in 2008, there are still question marks surrounding the ability of the new rules to control procurement practice (*Binnenlands Bestuur*, 2009).

There is therefore no coupling between the EU procurement rules and spatial planning in the sense of an assessment or land-use claim; in principle, the activities remain the same. It is the *process* that is subject to the EU rules. The EU procurement procedure not only determines the design of the procurement process (including such things as the way it is announced and the period within which tenders may be submitted), but also the criteria for awarding contracts (since the beginning of 2014, the 'best price/quality ratio'). If the procurement procedure is poorly integrated into the planning process, it can lead to delays. Uncertainty about who will be awarded the contract (and the contracting process itself) can also affect the planning process. Moreover, the fact that government authorities are no longer entirely free to choose their development partners, such as a trusted local party, can upset a delicate planning process (Tasan-Kok & Korthals Altes, 2012).

Management of the coupling

The management of the coupling depends on the two ways the procurement rules can be activated (putting the project out to tender via the EU procurement procedure and lodging a complaint against the direct award of the contract). Managing the coupling via the tendering procedure involves using the latitude provided by the rules themselves; for example, carefully describing the details of the contract to ensure the required level of quality. This makes the requirement to choose the best price (and soon the best price/quality ratio) *negotiable*. Another option is to try to *exclude* the project by keeping the tender below the threshold amount for

Table 4.6
Summary table*

	Activation	Flexibility
Text		
Transposition		
Application and enforcement	Jurisprudence makes procurement rules important for area development ... *Exclusions:* *Keep below threshold amount* *Screening off:* *Do not put out to tender*	... and restricts the freedom of action of local authorities *Make negotiable:* *Describe required quality standards in detail*

* *italics = management of the coupling*

the procurement rules. However, this is not without risk, because projects may not be broken down into smaller pieces for this reason.

Another way of managing the coupling is to award the contract without going through the EU procurement procedure and to try to *screen off* the activation. This option makes use of the grey area surrounding urban development projects. Even the Müller criteria are not unambiguous and can therefore be challenged, because it is still not entirely clear when there is a direct economic interest or a construction obligation (Boersen, 2012). This management strategy is actually an avoidance strategy. If a conflict arises it could go to court, as happened in Winsum, and the contract may be declared null and void (Keurentjes, 2012).

4.2.6 State aid: no transposition, stronger coupling via enforcement by EC

As stated, competition policy aims to ensure the proper functioning of the internal market and a level playing field. The internal market is one of the main pillars of European integration, for which the EU, in contrast to other policy areas relevant to spatial planning, has exclusive competence and does not share this with the Member States. Within this policy area, rules are established that apply equally to everyone and are actively enforced. An example of such a rule that is relevant to spatial planning is the prohibition of state aid.

Cases of state aid above a certain threshold (currently 200,000 euros per company over a three-year period or a loan-guarantee of more than 1.5 million euros)[5] must be notified to the European Commission (CEC, 2010), which assesses whether the state aid is permissible or not. State aid may be permissible if it does not lead to disruption of the national or international market or if there are overriding public interests at stake. For planning purposes, it is not always clear whether a specific policy measure, investment or transaction should be considered state aid. In practice, the European Commission takes a very broad view of what constitutes state aid: it includes not only the payment of subsidies, but also the sale of land under its market value. Not only government bodies, but also semi-public organisations must stick to the rules (Wolting et al., 2012).

The rules on state aid are only activated when the European Commission is notified, for example by the public authority concerned or by a third party (usually a competitor). In recent years, the European Commission has regularly conducted investigations into cases of suspected inadmissible state aid relevant to spatial planning.

The prohibition on state aid also has consequences for the role of housing associations. In 2005 the European Commission indicated that the public support of Dutch housing associations was possibly in violation of EU rules because the difference between the social and commercial activities of the housing associations was not clear enough. In 2007, the IVNB, the organisation of institutional investors in the Netherlands, submitted a complaint to the European Commissioner along the same lines; housing associations receiving state aid were becoming increasingly active in commercial markets.

After much discussion, in December 2009, the European Commission announced (Decision C(2009) 9963) the conditions under which Dutch housing associations are eligible for state aid without contravening EU competition policy. Allowed state aid includes the following: aid to projects in the form of direct subsidies paid by the Centraal Fonds Volkshuisvesting (Central Housing Fund), the loan-guarantees to housing associations provided by the Waarborgfonds Sociale Woningbouw (Guarantee Fund for the Construction of Social Housing) and possibly the purchase of land by local authorities below its market value. This state aid is permissible when it is notified and used to support services of general economic interest

Table 4.7
Cases of suspected inadmissible state aid relevant to spatial planning investigated by the European Commission

Location	Investigation by EC into suspected state aid	Decision
NL (mainly North Brabant)	C96/2001 Reconstruction of pig abattoirs	Negative
NL (Nat. Govt.)	C26/2001 Aid to road hauliers	Negative
Den Helder	N603/2002 Aid to Visser shipyard in connection with Spanish aid	Negative
Krimpen	N606/2002 Aid to Dredgers-Merwede shipyards in connection with Spanish aid	Negative
Enkhuizen, Nijkerk and Wieringermeer	C10/2003 Marina for recreational craft	Positive
Alkmaar	C49/2003, NN51/2003 Aid to AZ Vastgoed (football stadium)	Investigation terminated after Dutch compliance
Haaksbergen	C33/2005 Aid to MARKT Passage Plan Project	Positive
Appingedam	C35/2005 Broadband infrastructure	Negative
Eemshaven	C14/2005 Subsidy for a maltings	Negative
Amsterdam	C53/2006 Citynet Amsterdam	Positive
Leidschendam	A.24123 Sale of land in Leidschendam	Negative
Rotterdam	C4/2008 Investment in Ahoy	Positive
Eindhoven	2011/NN, 2013/C Aid to football clubs (incl. PSV stadium)	Positive

Table 4.8
Summary table*

	Activation	Flexibility
Text	Exclusions: de minimis rule in the Regulation	
Transposition		
Application and enforcement	*Screening off:* *Non-public land transactions*	

* *italics = management of the coupling*

(SGEI). These services consist of housing for low-income households and other socially vulnerable groups, which should make up 90% of the rental transactions, and a limited number of activities in social property. To properly separate these SGEI activities from non-SGEI activities, the relevant divisions of the housing associations should become separate administrative or legal entities.

Management of the coupling

In contrast to public procurement, the rules on state aid have been drawn up at the European level and the Member States have virtually no leeway for interpretation. It is up to the European Commission to judge whether a notified case of state aid is unlawful or not. The EU rules do allow a certain amount of room to prevent a coupling; the regulation contains a *de minimis* rule under which small aid amounts are *excluded*. Parties can also try to reduce the effects of the coupling by notifying the Commission early on, so any unwelcome news can be more easily dealt with. According to Cees Dekker (Nysingh lawyers and solicitors), 90% of notifications of state aid are judged to be admissible (in *Binnenlands Bestuur* 22 November 2013: 26). However, in practice, cases of state aid for urban development projects are hardly ever notified (*Binnenlands Bestuur* 22 November 2013: 27), because complicated land transactions are not made public and so the risk of activation is smaller (in effect a *screening off* strategy). As in the public procurement policy, such cases only come to light when there is a conflict and these cases often involve both state aid and procurement practices (e.g. Winsum and Ede). In such cases, national government has an intermediary role.

4.3 Impact of the system: international comparison

The strength of the coupling between EU policy and spatial planning depends not only on the characteristics of a particular EU policy, such as air quality or nature conservation, but also on the characteristics of the national institutions. Given that EU legislation is primarily sectoral, the relation between spatial and land-use policy and sector-specific plans within a particular country is an important factor in determining the nature of the coupling, in terms of both the degree to which the EU rules are activated and the degree of discretion in decision-making (cf. Beijen, 2010).

The coupling between sectoral policies and spatial planning is harder to manage via system characteristics than via policy-specific characteristics. System characteristics are embedded within the national culture, practices and legislation in all sorts of ways. To get a picture of the consequences of these system characteristics for the coupling, this section compares the situations in Germany and the Netherlands. It looks at how the legal system influences the coupling in both countries, how the connection between sectoral policies and spatial planning in Germany differs from that in the Netherlands, and what this means for the activation and application of EU rules.

4.3.1 Activation through the system of legal recourse

The degree to which stakeholders in planning procedures have access to the courts has an important influence on the activation of EU policies (Backes, 2006; Backes et al., 2006).

Access to legal recourse differs considerably between Germany and the Netherlands, although these differences are being reduced under the influence of EU policy, as we shall see later. Both countries have also signed the Aarhus Convention, under which they are committed to providing good access to legal recourse. Access is determined by formal legal conditions; which parties are considered to have an interest in a conflict on a planning decision (i.e. are stakeholders)? On what laws, rules or judgements can parties base their case? The practical aspects of accessibility are just as important; how much does it cost to take legal action? What are the financial implications of losing? How long does it take before a verdict is given? Who bears the burden of proof, and how much specialist knowledge is needed to provide the required information?

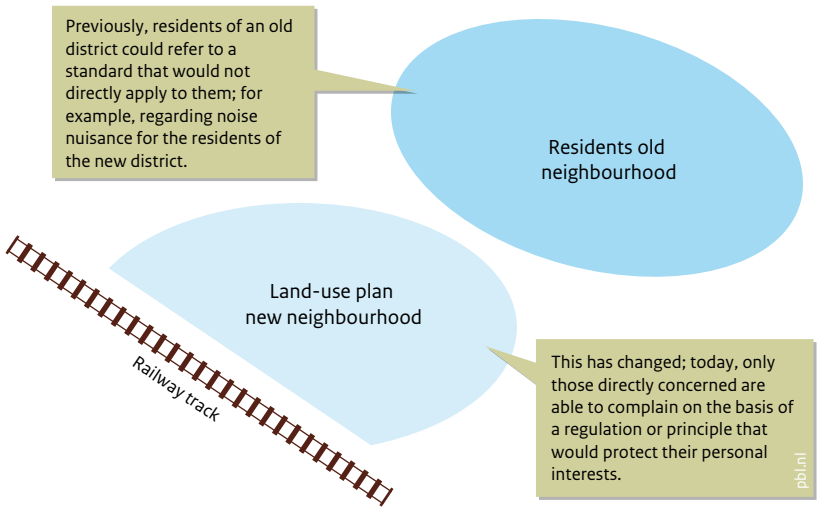
Practical access to the courts in the two countries differs in important ways. In Germany, the potential cost of losing is very high; claimants who lose not only have to pay their own legal costs, but also the costs of the opposing party. In the Netherlands, if the state loses it pays the claimant's costs, but not vice versa. The recent increase in court fees, however, makes the Dutch system a little less accessible. Compared with other European countries, the Dutch and German systems are very similar. In both countries, the courts have access to the specialist information needed for the case and neither party has to pay for this themselves.[6]

The key difference between the two countries lies in the *formal access* to legal recourse. Until 2004, the Netherlands maintained the principle of *actio popularis* in environmental and planning law (Backes, 2012). According to this principle, every citizen or legal entity can appeal against government decisions if they think the government has not carried out its statutory tasks properly. In other words, everyone is a stakeholder in government decisions. Dutch environmental organisations use this right frequently to appeal planning decisions, often invoking EU environmental and other standards. In Germany, only individuals or legal entities directly affected by a government decision have the right to appeal against it (Calliess, 2006; Backes, 2006). This makes it relatively difficult for NGOs to take legal action to activate EU policy in cases where EU standards are involved.

In the Netherlands, the principle of *action popularis* has been restricted by legal reforms, most recently by the Crisis and Recovery Act (Buitelaar et al., 2013). Nevertheless, environmental law still offers access to the courts for a broad range of people and groups. NGOs can lodge an appeal as long as they can show that their charter or constitution clearly states which environmental interests they aim to protect and can demonstrate that they also undertake activities to do this (and have not been established simply to take legal action) (Backes et al., 2006).

The degree of access to legal recourse depends partly on the legal standards that claimants can invoke. In the Netherlands, the Crisis and Recovery Act introduced the 'relativity principle' into administrative law, which states that claimants can only appeal to standards or regulations created to protect their interests. Under the old legislation, stakeholders could appeal against decisions on behalf of others. Claimants can now only appeal to EU rules if these concern their own interest (see Figure 4.5), which further restricts the possibilities for activating EU policy in the Netherlands.

Figure 4.5
Example of relativity principle



Source: PBL

In Germany, the possibilities for activating EU standards were expanded by EU legislation requiring public participation (*Öffentlichkeitsbeteiligung*), including the EIA Directive. Under the 'old' German appeal system, the courts only checked whether the decision, as the outcome of the process, was substantively sound. Citizens were not permitted to base their case on procedural matters, so claimants rarely succeeded in their actions if the decision itself was substantively sound. However, the European Court of Justice since decided that members of the German public were also entitled to appeal on 'procedural' matters. Respondents therefore cited the EIA Directive as an example of EU policy with a major impact on German spatial planning. This directive does not prescribe any substantive standards, but a procedure. This means that if a procedure, such as an EIA procedure, is not properly observed and the EIA is therefore not prepared in the right way, people in Germany now also have a right to appeal the outcome, entailing an impact on the system.

In short, the possibilities for activating EU legislation via the courts in the Netherlands and Germany have been increased by a number of very different developments. Europeanisation is occurring (Cancik, 2011) in the sense that, in both countries, the law has been amended in response to EU policy in ways that give the public and civil society organisations the right to appeal against decisions by invoking EU procedural requirements.

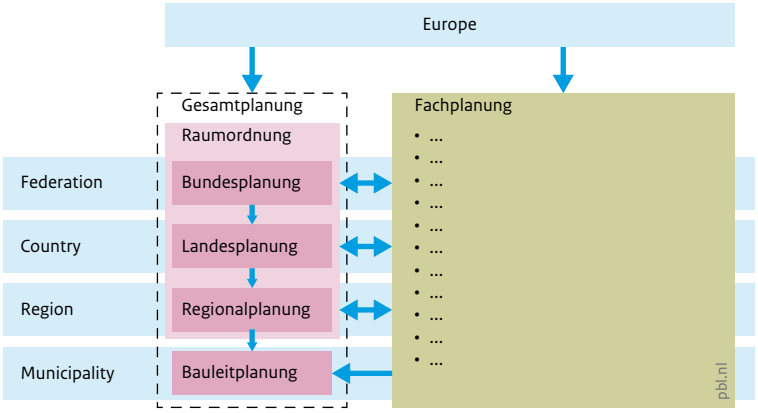
4.3.2 Sectoral policy versus spatial planning

As EU policy is almost always sectoral in nature, the degree to which planning decisions are coupled to EU policy also depends on the way in which the existing system determines the connections between sectoral interests and plans, on the one hand, and 'integrated' planning interests, on the other. In the Netherlands, spatial planning is traditionally perceived as the policy mechanism for balancing competing interests in which the aim is to reach consensus or a compromise, to the extent this is possible. This is just one way of approaching spatial planning policy and many other EU Member States take a different approach (see Figure 2.3 in Chapter 2). Moreover, even other countries with a comprehensive integrated approach to spatial planning, such as Germany, can carry out the practical integration of policy in different ways. These differences can be informative. This section compares this aspect of spatial planning in the Netherlands and Germany. It should be noted that these differences are not static, but are continually changing under the influence of various factors, including EU policy.

Spatial planning, sectoral policy and the new Environment and Planning Act in the Netherlands

In the Dutch tradition, spatial planning has the important task of weighing up the various competing interests within a certain area (e.g. economic development, agriculture, nature conservation, housing) and as far as possible reaching a compromise through the physical planning and design process (Van der Cammen et al.,

Figure 4.6
German spatial planning system



Source: Kenniscentrum Leefomgeving 2011; PBL

2012; CEC, 1997). In this sense, spatial planning is, ideally, a 'facet policy' directed at coordination. In contrast to 'sectoral policy', the aim is not to maximise a single interest, but to resolve and integrate the spatial facets of all the various interests (Voogd and Woltjer, 2010). In this sense, spatial planning stands 'above' the sectors.

Even without EU policy, though, reality did not live up to theory. The increasing number and complexity of sectoral rules in fields such as water policy, environment, and urban development and housing intensified silo policy-making, making it increasingly difficult to get an overall picture of all these sectoral systems. The 'integrating' solutions that were devised, such as the project decision procedure in the Crisis and Recovery Act and the Transport Infrastructure (Planning Procedures) Act, were tailored to sectoral needs and did not lead to truly integrated outcomes: 'For various reasons spatial planning, originally invented as a general integrating framework for policies and decisions affecting the use of land, can no longer properly fulfil its facet planning function and is being overtaken by sectoral planning and project decision procedures' (Backes, 2010: 3).

The growing influence of rules derived from EU legislation is also weakening the ability of spatial planning to balance land-use claims. Publications by the OTB Research Institute for Housing, Urban and Mobility Studies (Zonneveld et al., 2008; Zonneveld et al., 2011) reveal a mismatch between EU policy (sectoral) and the Dutch tradition of 'integrated area development'. EU environmental policy contains compulsory targets that are not easily reconciled with the traditional Dutch practice of consensus planning involving balancing interests, institutionalised negotiation, trade-offs and compromise (the 'polder model') (Zonneveld et al., 2011: 57; see also Dijstelbloem et al., 2004).

The 'hard' targets and standards in EU law have considerably increased the risk to planning authorities of losing legal challenges to their decisions. As a consequence, they have to cover themselves against these risks, which in turn has led to a further juridification of the planning process, strengthening the existing trend towards more detailed and more rigid land-use plans. Moreover, certain sectoral interests are guaranteed by hard EU standards and targets, while others are not (Beijen, 2012: 369). This limits the discretion to balance interests to those policy areas not defined by EU law.

Environment and Planning Act

The new Environment and Planning Act, expected to come into force in 2018, has been drafted specifically with the aim of promoting integrated assessments of interests in the use and development of land. The Environment and Planning (General Provisions) Act introduced an integrated permit procedure for a variety of different territorial interests of initiatives, but the Environment and Planning Act goes a step further. It attempts to increase the connections between Dutch and EU law by adopting the same legislative approach as the EU (The Dutch Council of State 2010: 69–71) by mirroring the structure of EU environmental directives. According to the Explanatory Memorandum, the structure of the law is based on a policy cycle geared to the active realisation of specific objectives for the environment:

1. establish the baseline situation and/or map the existing situation;
2. compare the baseline situation with the stated objectives;

English term (sectoral planning)	German term (*Fachplanung*)
Waste management	Abfall
Mining	Bergbau, Rohstoffabbau
Infrastructure routes for energy and minerals	Energie- und Rohstofftrassen
Transport (rail, road, water, air)	Verkehrr (Schiene, Straße, Wasserstraße, Luftverkehr)
Defence	Verteidigung
Water bodies	Wasserwirtschaft (Gewässerausbau, künstliche Wasserspeicher
Soil remediation	Bodenschutz
Conservation of historic buildings	Denkmalschutz
Forestry	Forstwirstschaft
Environmental quality (air, noise)	Immissionsschutz (Luft, Lärm)
Agriculture	Landwirtschaft
Nature and landscape conservation	Natur- und Landschaftsschutz
Drinking water, water treatment, water quality, flood protection	Wasserwirtschaft (Wasserversorgung, Abwasserbeseitigung, Gewässerschutz, Hochwasserschutz)

Source: TU Berlin

3. if there is a discrepancy, the Member State must make every effort to achieve the objective via general rules, permits or a plan or programme;
4. monitor the results.

Because this system is also employed in the Environment and Planning Act for 'national' objectives, fewer separate instruments are necessary. In addition, the Environment and Planning Act better reflects EU policy in its use of concepts and terms, such as the term 'environmental value', and the inclusion of the concept of 'plan or programme' as a policy instrument. In the older generations of legislation, the term 'plan' referred to a spatial plan (e.g. a land-use plan or structure plan), whereas in the Environment and Planning Act, it has a wider meaning closer to 'programme', as frequently employed for meeting the requirements of EU directives. These plans must contain at least the proposed measures, the use of instruments and the arrangements made to achieve the objective. In taking this approach, the Environment and Planning Act aims to put an end to the practice of integrating EU policies into national law one by one, which according to the Explanatory Memorandum led 'to fragmented policy. Adopting the EU system into the Environment and Planning Act makes it easier to satisfy the obligations in the directives' (MvT toetsversie Omgevingswet, 2013: 27).

The Environment and Planning Act itself does not contain the standards for the relevant policy areas. To make it easier to amend standards as EU policies are revised, these are set down in separate orders in council.
As described in Section 4.2, amending standards is part of the management of coupling. Separating the standards from the act should make it easier to achieve the desired amount of coupling.

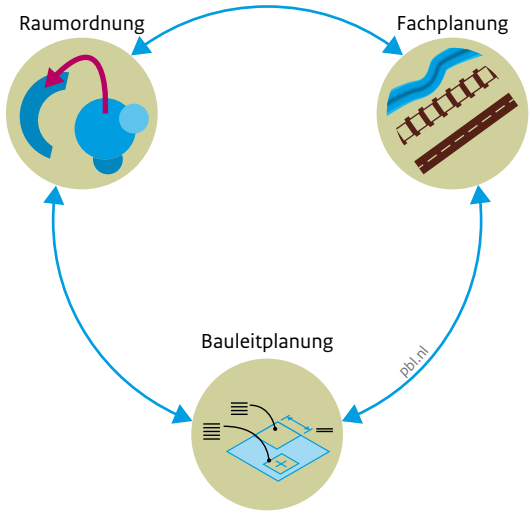
The relationship between sectoral and integrated policy in Germany

EU policies are having an increasing influence on German planning policy and practice as well. In Germany, there are three types of planning and the relationships between them are highly complex. The umbrella term *Raumplanung* (to avoid any confusion arising from differences in planning concepts and terminology, in this section we use only the German terms) covers all three types of planning. This triptych is not simply a reflection of the hierarchical federal system of *Bund*, *Bundesland/Bezirk* and *Gemeinde*; they cut across these administrative boundaries.

First, a distinction can be made between *Gesamtplanung* and *Fachplanung* (see Figure 4.6). *Fachplanung*, is conducted by sectoral departments such as for water management, nature conservation or infrastructure. These have their own planning powers to ensure the territorial aspects of their policies are properly regulated. These *Fachplanung* powers operate at the federal level (*Bund*) as well as at the level of the individual state (*Land*) and municipality (*Gemeinde*).

The task of balancing and integrating the various territorial interests and land use claims lies with *Gesamtplanung*. *Gesamtplanung* also has its own substantive objectives and is divided into local planning by the municipalities (*Bauleitplanung*), and planning by the region, state, *Bezirk* (if present) and the federal government (*Raumordnung*). The municipal *Bauleitplan* is comparable with the Dutch land-use plan (*bestemmingsplan*) and is the only plan that is legally binding on individuals. Municipalities also make a *Flächennutzungsplan* in which they present a strategic vision on the future spatial development of their territory, somewhat similar to the Dutch *structuurvisie*. No rights can

Figure 4.7
Relationships between the three forms of Raumplanung



Source: PBL

be derived from the *Flächennutzungsplan*, although it is binding on government authorities. *Raumordnung* plans (*Entwicklungspläne*) are also only directly relevant for coordination of policies between government authorities. Federal *Raumordnung* (by the *Bund*) consists hardly, if at all, of traditional plans with maps, but sets out the basic planning principles and procedural requirements (Kenniscentrum Leefomgeving, 2011; Turowski, 2002; Hirt, 2007).[7]

The question of whether a sector has planning competences (i.e. *Fachplanung*), is set down in law. There must be a statutory basis for *Fachplanung* powers and there is a limitative list of *Fachplanung* competences.[8] Not all sectoral interests have *Fachplanung* competences. For example, the retail sector does not have a *Fachplanung* competence and until recently neither did renewable energy (Krappweis, 2014). EU policies, therefore, do not always have a corresponding *Fachplanung* competence in Germany.

In practice, the three types of planning powers – *Raumordnung*, *Bauleitplanung* and *Fachplanung* – all have a balancing or integrating task. The German system tries to resolve conflicts between the various planning competences *in advance* and *explicitly*. This is arranged partly through a set of general rules. In addition, policies must clearly state what is 'negotiable' (i.e. what can be balanced against other interests), and where one interest clearly prevails over another. The result of all this is a complex web of relationships between superior, subordinate and equivalent interests.

The German system of detailed control over the connections between sectoral policies and spatial planning differs from the Dutch system, in which the final balancing act takes place by planning by the 'general' and not 'sectoral' government authorities. Sectoral planning powers of government agencies are based on the administrative hierarchy of government.[9]

The relationship between the three types of planning also determines the influence EU policies have on planning decisions in Germany. As EU policy is incorporated via the different types of planning, EU standards can be activated by each of the three planning types. For example, in response to EU policies, *Bauleitplanung* is moving more towards the environmental field and has adopted provisions directly from the Natura 2000 policy.[10] In most cases, though, EU policies are integrated into specific *Fachplanung* competences. In these cases, the priorities between the various types of plans under German Law are partly responsible for the degree of influence the EU policy has on the decision-making process. Therefore, these relationships are examined here in more detail.

The relationships between *Raumordnung*, *Fachplanung* and *Bauleitplanung* (Figure 4.7) are determined by the formal regulations on procedural and substantive priorities (Kraft, 1999), which are not necessarily based on the layers of government. All this is complemented by an informal component relating to which planning authority has more political power and skill to give their own plan a practical advantage.

Formal relationships

There are 25 *Fachplanung* authorities with planning competences. In most cases, this means that when *Bauleitplanung* and *Raumordnung* plans are drawn up, the policies of the sectoral government departments or agencies in question must be 'heard', and their objections, standards and plans must be taken into account in the subsequent assessment and decision-making on both types of *Gesamtplanung*, although the *Gesamtplanung* has its own decision-making latitude (Grieving, 2003).[11] If the sectoral planning agencies do not lodge objections in time, they have to revise their own plans or pay the costs of having these changes made (Kraft, 1999).

In addition to these 'general rules' governing the hierarchical relationships between plans, there is a special procedure, the *Planfeststellungsverfahren*. In this procedure, *Fachplanungen*[12] for major projects of regional or national interest, such as a new motorway, take over the whole planning procedure (Bregman, 1999; Kraft, 1999). The representatives of *Raumordnung* and *Bauleitplanung*, and of other *Fachplanungen*, have to be 'heard', but the sectoral planning authorities have the power to overrule them and come to a different decision. This procedure results in a decision that not only determines the designated land use – municipalities must incorporate this decision into their own planning documents – but also provides the permit. Municipalities and representatives from the *Raumordnung* authorities are free to lodge an appeal against this decision. Even if the *Fachplanung* authority does not want to realise a major development project, but just wants to designate a certain area for a land use of regional or national importance (*Nutzungsregelung*), for example to protect water or air quality or for nature conservation purposes, the authority has the power to do this after hearing stakeholders, and the municipality must then adopt these provisions in the *Flächennuetzungsplan* or *Bebauungsplan* (*Bauleitplanung*).[13] In short, even if the *Fachplanung* is for a sectoral interest, an integrated balancing of interests also occurs, only this balancing is led by the sectoral department or agency.

The relationship between *Raumordnung* and *Bauleitplanung* is relatively simple. Municipalities must adopt the objectives of the state *Raumordnung* authority (designation of land uses in specific areas) and the planning principles of the state and federal government in their *Bauleitplanung*. They can provide input (*Gegenstromprinzip*) when *Raumordnung* plans are drawn up.

Most conflicts in German planning arise from the relationship between *Raumordnung* and *Fachplanung* (Kment, 2010), which can be hierarchical, a division of tasks or a conflict of interests (Krappweiss, 2014). As long as *Raumordnung* is restricted to visions and principles of spatial development, conflicts are unlikely to arise, because on these matters the concrete objectives of *Fachplanung* clearly have priority. After all, it is the task of *Raumordnung* to balance and coordinate the different interests of different *Fachplanung* plans and reduce conflicts to a minimum (by finding alternative locations or bundling projects). The *Fachplanung* plans can then be worked out in more detail. *Raumordnung* can also help the *Fachplanung* process by reserving sites for certain functions or adopting land-use provisions before the sectoral plans become official.

Raumordnung can also designate quite precisely where certain functions should be located (the *Ziele der Raumordnung*), for example for wind energy facilities and gravel quarries. Although some *Fachplanung* laws clearly state that *Fachplanung* plans must adopt these land-use designations established by *Raumordnung*, it is not always clear which formally have 'priority' (Krautzburger and Stüer, 2004). These situations can lead to conflict between federal *Fachplanung* and state *Raumordnung;* for example, when the state tries to designate a specific area to either block or force the adoption of an infrastructural route. Unlike the situation in the Netherlands, the federal government does not formally always have priority.

In the *Raumordnungsverfahren* process, the various authorities can together decide whether a major project is compatible with the principle and objectives of the *Raumordnung* plan. Other than in a *Planfeststellungsverfahren* process, no formal decision is made; it is simply a means to start the balancing and coordination process at an early stage in the proceedings.
Another solution is to divide up the tasks, so that *Raumordnung* is restricted to those topics for which there is no *Fachplanung* (such as urban development, retail planning and recreation), leaving other topics to *Fachplanung*.

Relationships in practice

Whether *Fachplanung* or *Raumordnung* wins out is largely determined by the relationships in practice and not by formal regulations and powers. It is also a case of who is the first to adopt a plan. The trend is towards increasingly 'professional' sectoral planning in the preliminary stages (*vorbereitende Fachplanung*) in order to make major planning processes so secure they cannot be ignored by *Raumordnung*. Moreover, government departments for *Fachplanung* have more capacity than those for spatial planning.

In the end, the outcome is largely determined by the political and administrative clout of the planning

authorities concerned. *Fachplanung* often concerns topics of considerable economic importance, such as major infrastructure projects, whereas *Raumordnung* concerns 'softer' topics such as landscape conservation and out-of-town retail. The balance of power between government departments plays itself out through *Fachplanung*, which has considerable political clout and resources. *Fachplanung* also has a key policy instrument at its disposal that is not available to *Raumordnung*: compulsory purchase.

Political weakness is one of the reasons why *Raumordnung* processes are considered to be relatively sluggish, and why the federal government sometimes chooses other routes. This is illustrated by the following example. The federal government wants to speed up the transition to renewable energy by building a high voltage transmission line across the whole country. The proper vehicles for reserving this route are *Raumordnung* plans in five different federal states and an even greater number of *Bezirke*. To do this more quickly via a sectoral *Fachplanung* procedure, the federal government established its own sectoral agency and passed a new law.

4.3.3 Reflection on the system comparison

In the Netherlands, the growing importance of EU policy is undermining the integrating, 'sector-balancing' nature of spatial planning. Certain environmental and other interests can no longer be included in the balancing process because they are non-negotiable. These sectoral interests are 'harder' than those that are not the subject of EU policy. In the Netherlands, therefore, a new relationship has to be found between what is negotiable in the balancing of interests in spatial planning and what is not. For certain policies, the national government is trying to influence the strength of the coupling (see Section 4.2) and the activation of EU standards by changing the system of legal recourse, among other methods.

In Germany, the connection between spatial planning and sectoral policies is completely different. There is a system of mutual adjustment between three types of planning agencies, including representatives of sectoral interests, who have their own planning competence (*Fachplanung*). These planning agencies operate in a complex web of regulated mutual influences and it is mainly within these complex relationships between different government agencies that the activation of EU policy is brought about. Activation via individuals appealing to the courts occurs less frequently than in the Netherlands. The German system contains formal and informal rules for balancing interests as well as principles for balanced decision-making. The idea is to determine the net level of 'negotiability' of sectoral interests as early as possible in the process.

The German situation, in a certain sense, is comparable with the long-standing connection between flood protection policy and spatial planning in the Netherlands. The water authorities are functional administrations and do not fit into the hierarchy of territorial government. Their involvement in spatial planning is completely regulated. They have their own powers to make plans; for example, for widening dykes and to issue permits and regulations for land use. The recently introduced water assessment obliges municipalities to consult with the water management authority when making land-use plans, but also clearly states that the advice by the water management authority is 'negotiable' – it can be balanced against other interests.

In comparison to the Netherlands, EU standards are more easily integrated into the German system and, in that sense, they do not disrupt existing planning practices. In Germany the decision-making discretion in *Gesamtplanung* has already been systematically eroded by other government organisations, namely the *Fachplanung* planners. The question of which of the mutual requirements are binding and which are 'negotiable' – a process that Dutch municipalities must 'learn' to deal with in their planning procedures as EU legislation is implemented – has been extensively discussed in Germany and is already determined as far as possible in advance by a set of rules. These rules are not as straightforward as those involved would like, but at least they work within the existing government structure, which is not so much hierarchical as 'lateral'. The statement: 'we have to do this because the EU says so' often means 'our colleagues in another department say we have to do this'. EU rules are then perceived primarily as being subject-specific or the consequence of the balance of power that has emerged between policy areas rather than EU influence.

Nevertheless, the German planning system still has to be amended as a result of EU policy, particularly where it concerns the possibilities for the public to influence decisions. In the German system, although planning agencies have been embedded within the complex planning system and complex web of relationships with other planning agencies, within these parameters they had considerable decision-making powers, which is why claimants rarely succeeded in their actions if the decision itself was sound. EU legislation, in the first instance, has led to greater access to planning processes for NGOs, and secondly to an increase in formal procedural grounds for appeal. In Germany, therefore, some EU rules have led to

an increase in the number of possibilities for activating other EU policies.

4.4 Conclusion

This chapter examined the impact of the EU on the planning process in general and on the coupling between planning and EU policy in particular. Coupling means that decisions on a physical development depend partly on the degree to which it helps achieve EU policy objectives. This coupling is 'managed' for specific policies both by controlling the activation of EU rules and by utilising their flexibility. In general, the Dutch national government had used these options to find as much discretionary leeway as possible, within the limits imposed by EU law, through the traditional Dutch style of comprehensive integrated planning.

The introduction stated that the coupling of spatial planning with EU policy occurs in three ways: via a statutory assessment, via a claim on land and via the planning process. Managing the degree of coupling focuses mainly on the first mechanism: assessment against an EU standard. This has led to considerable decoupling in many policy areas, either during the transposition of EU policy into Dutch law or during the application and enforcement of these laws.

Nevertheless, this picture must be qualified on two points. The programmatic approach chosen in many cases weakens the coupling, but it also postpones the moment when EU standards or targets must be met. If it becomes clear at some stage that the programme cannot be expected to achieve the objectives, projects may become liable for direct assessment against the EU standard (Fleurke and Trouwborst, 2011). In other words, a stronger coupling can then arise at the enforcement stage. The second qualification is that the mismatch between an integrated balancing of all interests and the 'hard' interests of EU policy is felt even in a programmatic approach.

The Netherlands has not just made changes in specific policy areas to manage coupling, but also at the level of administrative systems. The Environment and Planning Act is designed explicitly to improve coordination between EU policy and Dutch planning and sectoral policies where there is already a strong coupling. In contrast, the changes made to the access to legal recourse via the Crisis and Recovery Act weaken the coupling because it restricts activation.

The comparison with Germany revealed that the impact of EU policies varies according to the legal and administrative system. In the Netherlands, the impact of EU policies largely arises from substantive criteria which heightens already existing tensions between integrated and sectoral policy. In Germany, the impact of EU policies largely arises from procedural criteria as it changes the opportunities for individuals and organisations to make objections.

The comparison with Germany clearly shows that there is more than one option to manage the impact of EU rules on spatial planning. One option, explored in the Netherlands, is to try to keep the room for integrated decision-making as wide as possible within the limits set by the EU. Another is to try to make sectoral planning as integrative as possible. The latter could be achieved by ensuring that sectoral planning takes place in conjunction with other planning agencies much more than at present. The Environment and Planning Act, with its uniform concepts, creates part of the framework necessary for better cooperation across sectoral boundaries.

At the same time, it is clear that an integrating framework law such as the Environment and Planning Act has not yet brought about this interaction. This is because an integrating law applies to a variety of organisations, and cooperation between these organisations is only possible when the parties concerned are familiar with the procedures and working practices. An example of such cooperation in the Netherlands is the relationship between the water authorities and spatial planning authorities.

Finally, it is important not to lose sight of the fact that the use of planning powers is not only dictated by formal rules, but to a significant extent is also guided by informal rules and relationships. In Germany, too, informal power relations between planning agencies have a significant effect on final decision-making.

Notes

1 The scope of application of the rules and possible exceptions are important factors for the coupling. For example, either the established environmental capacity (i.e. the permissible load on the environment) can be divided among new projects only, or can be made to apply to existing uses, as well. Oosterhuis et al. (2007) describe this for the IPPC Directive. If it applies to new projects, the environmental capacity will be smaller and the EU standards

will become more important for decision-making. The emphasis is then on the planning of new land-use projects and less on other, non-spatial measures (such as industrial standards), which also affect existing users. The strength of coupling is therefore influenced by the nature of the standards.

2 However, this regulation no longer uses the limit values for PM10 and NO2, because it became clear that much smaller particles of soot and other materials (PM2.5) are probably responsible for health impacts.

3 This directive was revised at the beginning of 2014 (among other things to make it easier for SMEs to participate) but, at the time of writing, the final text had not been published. The Netherlands has two years to transpose the new EU rules into national law.

4 This amount is periodically updated in EU regulations; the current amount is from EC 1336/2013.

5 Commission Regulation (EC) No. 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid.

6 In the Netherlands via Stichting STAP; in Germany this is part of the research tasks of the courts.

7 Note that Fachplanung at the federal level does involve the preparation of plan documents.

8 This list can be found at http://planung-tu-berlin.de/Profil/Fachplanungen.htm.

9 With the possible exception of the water authorities, which as functional administrations occupy a position 'perpendicular' to this column.

10 Prof. dr. Grigoleit, personal communication.

11 'Take into account' can obviously be interpreted in different ways. In Germany there is a distinction between berücksichtigen (consider) and beachten (take account of). The latter is more compelling than the former.

12 a) Fernstraßen (Rn. 9-13) b) Eisenbahnen und Magnetschwebebahn (Rn. 14, 15) c) Luftverkehr (Rn. 16-18) d) Telekommunikation (Rn. 19) e) Energieversorgung (Rn. 20) f) Personenbeförderung und Versuchsanlagen für spurgeführten Verkehr (Rn. 21, 22) g) Abfallbeseitigungsanlagen (Rn. 23-25) h) Wasserstraßen und -haushalt (Rn. 26-29) i) Bergbauvorhaben (Rn. 29a).

13 The relationship between Fachplanung and Bauleitplanung is less clear-cut for local projects (with no wider significance) and land-use restrictions. On this aspect there is a considerable body of jurisprudence.

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