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The New Dutch Land Use Law “Omgevingswet”

Is it the Promised Paradigm Shift?



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SUMMARY

>> This essay reflects on the new Dutch land use law, the Environment and Spatial Planning Act (Omgevingswet), which integrates 26 sectoral laws into one comprehensive law. After outlining the ‘basics’ of this new law, the article reflects on what the Omgevingswet is actually trying to integrate. Also, the article provides some practical tools for the future uptake of the new law in planning practice. Finally, we conclude that the promised ‘paradigm shift’ is not yet happening, at least not as a single change event, but rather the new law has set in motion a process of structural change that Dutch municipal officers will be working on and embracing in their planning practices in the years to come.

Key words: planning law; land use; integration; instruments; Omgevingswet

1 INTRODUCTION

As of January 2024, the new Dutch Environment and Spatial Planning Act ('Omgevingswet') has been officially implemented, which, at least on paper, marks a fundamental shift in the formal (re-)organization of the Dutch planning system. Up until now, however, there has been only little scholarly reflection on this new land use law and its implications for spatial planning practice. The existing literature was written 'in anticipation of' the new law or is treating mostly the law's technical, legal, or judicial aspects (e.g., Backes et al., 2024; Van Karnenbeek, 2023). So far, a more applied overview of the purpose, content, and potential implications of the Omgevingswet for spatial planning practice is missing.

Therefore, this commentary provides a broad overview of the new Dutch planning law, including its purpose and general content (Section 2), and a reflection on the planning transitions incorporated into it (Section 3). We also offer a vision of how this might be implemented in everyday practice (Section 4) before arriving at some conclusions in Section 5.

2 THE BASICS OF THE NEW DUTCH LAND USE LAW “OMGEVINGSWET”

The new Dutch land use law mostly centers around integrated land use, which starkly contrasts the previous system, consisting of a rather general Spatial Planning Act and many sectoral laws (on water, infrastructure, nature, etc.). The new law's focus is more comprehensive, which also means increasing the use of less easily quantifiable parameters to guide spatial decisions. The Dutch term 'Omgeving' ('environment') represents an integration of all parameters in a more holistic way, including the 'human factor' and a new land allocation approach ('ETFAL'; 'balanced allocation of functions to locations'), which will be elaborated upon later. The whole was presented and titled as a paradigm shift.

The new law emphasizes a safe and healthy physical environment (Omgevingswet, Article 1.3a) and consolidates 26 existing, by and large, more sectoral, laws into this new land use law (Ministry of Infrastructure and Environment, 2016). This does not mark a real substantive change from the previous legal system but rather an integration of existing laws and practices. Like previous spatial planning laws in the Netherlands, this new law is a framework legislation law rather than a detailed and prescriptive one, offering the different layers of government considerable flexibility to formulate their policies and rules within the wider legal framework (Van Gestel and Vleugel, 2008, p. 4). Lastly, the new Dutch land use law comprises six core instruments (Informatiepunt Leefomgeving, 2024). We first focus on the instrument related to decentralization in more detail, and after that, we will discuss the other five instruments more briefly.

2.1 Core instrument: decentralized rules and the zoning plan

All spatial regulations are consolidated in the local land use zoning plan, called 'Omgevingsplan' ('environmental plan'). This is the key component of the core instrument of 'decentralized rules' (*decentrale regels*). Incorporating the former 26 separate laws into one plan makes this an extensive, complex plan and procedure, far more so than was the case in the previous land use zoning plan under the old law. However, nearly all relevant information is now collected in one place or document ('one stop shop'). Previously, for any kind of spatial intervention, one had to review policies and regulations from multiple sources to get a complete overview of what was (im-)possible at a specific location, a task manageable only with quite some planning experience. In other words, the new law provides better opportunities for a broader variety of stakeholders to inform themselves about spatial development opportunities in their direct living environment and to participate herein.

The zoning plan will simplify the search for rules and policies, as most information is captured in one document. However, so far, only a few municipalities have fully implemented it. This transition regulation allows old zoning plans to be converted into 'environmental' ones. Municipalities have until the first of January 2032 to implement complete Environmental Plans according to the new law (Kerklingh, 2024). Over the coming years, many municipalities are expected to gradually expand their Environmental Plans by adding thematic additions (e.g., water, monuments, etc.) to the old zoning plans.

The zoning plan still governs all rights for building and use, although the traditional terms like 'residential,' 'social,' or 'industrial' are now referred to more generally as 'functions.' Under the new law, multiple functions can be 'stacked' or layered as 'operational areas' (*werkingsgebieden*) on a specific location. Where municipalities previously had a patchwork of different zoning plans, each municipality will eventually have a single zoning plan for its entire jurisdiction. Some former national regulations, known as the 'dowry' (*bruidsschat*) will also be incorporated in the zoning plan. Municipalities may tailor part of these rules to local conditions, such as stricter ground rules for a municipality like Gouda with soft soil, while for municipalities in parts of the east of the Netherlands, the standard rules are enough because of their mostly sandy soil.

2.2 Brief overview of the other core instruments

So, the decentralized rules, with the Environmental Plan as the central element, can be considered the main instrument of the new law. In addition, five other core instruments will be briefly mentioned here (IPLO, 2024a). The first is the Environmental Strategy ('Omgevingsvisie'), which, like the former structural vision ('structuurvisie'), establishes long-term spatial policy and is self-binding to the level of government that formulates such a vision. Second, the Land Use

Programs ('programma's') bridge the Environmental Strategy with the concrete Environmental Plan. A program can focus on thematic or area-specific goals or be hybrid.

Third, the 'national comprehensive rules' component also issues what may be locally implemented without requiring further permits. However, the subsidiarity principle remains unchanged, meaning municipalities are primarily responsible for creating their own rules and policies unless provincial, water authority, or national policies with overriding interests dictate otherwise. This is then specified in, for instance, the 'Provincial Environmental Ordinance' ('*provinciale omgevingsverordening*') or the 'Water Authority Regulations' ('*waterschapsverordening*'). Fourth, the core instrument 'project decision' ('*projectbesluit*'), enables a single spatial decision, for example for infrastructure. Think, for instance, of dike reinforcement that can be implemented at once over a full route rather than stipulating what must be done in separate zoning plans for each involved municipality.

Fifth, the Environmental Permit ('*Omgevingsvergunning*') encompasses the issuing of permits for all small-scale activities like building, demolishing, tree cutting, and so on. This operational instrument also existed under the previous planning law but under a different name: building permit ('*bouwvergunning*'). The new zoning plan and the other five core instrument are viewed as a 'Swiss pocket knife' with six tools that can improve the 'toolbox' of governmental officers to accelerate, simplify, and improve spatial development procedures that were perceived as a complicated and time-consuming under the old law (Ministry BZK, 2018). The next section will reflect on whether the law can achieve its goals and the promised and self-acclaimed paradigm shift.

3 REFLECTION: WHAT ARE WE INTEGRATING?

The Environment and Spatial Planning Act aims to make spatial planning 'simpler, faster, and better' by consolidating all information into one law (Tweede Kamer, 2014, Chapter 2). This ambition is questionable and might be unrealistic, as this is considered the largest legislative operation in the Netherlands since World War II (Van der Ven, 2023, p. 656). We offer some procedural reflections on the current implementation of the new law before putting this in a historical perspective of changes in the substantial or procedural focus of planning legislation in the Netherlands over time. This highlights what we aim to integrate with the new Environment and Spatial Planning Act.

3.1 Some procedural reflections on 'simpler' and 'faster'

It should be noted that combining 26 laws into one comprehensive law does not immediately or substantially alter existing procedures or laws. We offer three examples of this more slow change. First, all area investigations, depending on the spatial context, need to establish a land use plan. For example, the sometimes necessary but time-consuming but survey will continue as an essential basis for spatial decisions. Second, procedures like the initial project environmental impact assessment ('*vormvrije mer*') remain mandatory, although it is now incorporated into the whole procedure of the Environmental Permit (IPLO, 2024b). This procedure does not always yield new intended insights regarding the environment, but it adds time and costs to the project. Third, appeal and objection procedures remain as they were, offering no acceleration.

The promised speedup of the procedures also has some other sidenotes. First, behind the scenes of municipal planning practices, it can be observed that combining laws and creating a single zoning plan necessitates a substantial adjustment of local government bureaucracies. Second, a significant part of the planning process now occurs before the formal procedure begins, in the informal planning phase. This phase existed under the previous law (Wro), but the distinction between the informal and formal phases is now more pronounced. This makes the formal procedure time shorter, but it is a displacement to a different phase. These examples suggest that the promised simplification, acceleration, and improvement have some caveats and may not always deliver the anticipated effects.

3.2 Waves of law integration and separation over the decades

Throughout the decades, unifying and separating legislation trends have recurred in Dutch spatial planning. This manifests in waves: initial integration of laws, followed by new, separate, and shortened procedures and rules. For instance, the 1965 planning law (WRO) was augmented by accelerated procedures under Article 19 and the later exemption list ('*kruimellijst*') for 'small impact projects.' After the subsequent planning law of 2008 (Wro), there was another modification in the form of the Crisis and Recovery Act (2010) for more procedural speed. Now, with the new Dutch land use law, all spatial procedures for projects that are not aligned with the zoning plan are unified in one of three paths: 1) a zoning plan amendment; 2) the Extra Zoning Plan Activity ('*Buitenplanse OmgevingsPlan Activiteit*,' or BOPA) and 3) occasionally, a project decision.

The new Dutch land use law thus sits at the peak of the trend towards consolidating various regulations into a single framework. The question is where the next wave pattern is headed. We already see some early signs in the language used internally by municipalities. The 'BOPA' procedure is a container process for amendments to the zoning plan. This can range from small plans

(e.g., Dedding, 2024) to larger ones. During the municipalities' review of these BOPA plans, classifications such as large or small BOPAs have already emerged (also Schelven et al., 2024). Looking at the wave patterns from the past, the authors believe it is only a matter of time before different levels of justification are required for large and small BOPAs, a priority by the Council of State for certain plans, and so on. In the past, new, shortened procedures emerged alongside the original law in a similar manner.

3.3 Land Use Laws Integrating Previous Trends in Land Use: Existing Patterns Remain

Over the decades, we have observed waves of regulatory trends and shifts in substantive focus within spatial planning (see e.g., Witte & Hartmann, 2022, and the first and last chapters of this edited book). Legislation has followed these trends. We illustrate the emergence of new legislation with two examples before exploring the emerging themes embraced by the new Dutch land use law.

First, the Housing Act of 1901 (*Woningwet*) and its later successors were partly a response to the issues of housing shortages, health and hygiene problems in large cities, and quality within spatial planning. More recently, legislation has responded to the issue of affordable housing. For example, the Affordable Rental Act (2024) has been introduced, and municipalities and provinces are setting their regulations concerning the balance between social, mid-range rental/purchase, and private sector development (Ministry BZK, 2024; Municipality of Gouda, 2021 & 2023; Province of South Holland, 2024, p. 9).

Second, the more sectoral theme of water follows a similar pattern. Water has always been essential to spatial planning in the Netherlands. Over time, water-related considerations have gradually become embedded in the law itself. Water became part of the Spatial Planning Decree by introducing the water test (Ministry of Housing, Spatial Planning and the Environment, 2003), and the Water Act of 2009 consolidated eight existing laws (Dutch Water Authorities, 2024). The Water Act is now part of the new Dutch land use law.

If the law has always tended to incorporate and reflect societal changes, what themes does the new Environmental Planning Act aim to integrate?

3.4 What is the New Dutch Land Use Law Combining and Integrating?

In the authors' view, the new focus of the Dutch land use law lies in two key aspects: the so-called 'human factor' and a different approach to making spatial choices through the principle of a 'balanced allocation of functions to locations' (i.e., 'ETFAL' or *Evenwichtige Toedeling van Functies Aan Locaties*).

First, the human factor is now more prominent in the law. Participation is now even mandatory in some cases, although this cannot be legally enforced on content. Furthermore, a safe and healthy living environment (Omgevingswet, Article 1.3 under a) is explicitly included, giving people a stronger legal position in spatial decision-making. The human factor, in a broader way, has previously emerged in the discipline and practice with the rise of communicative planning in the 1960s and 1970s and environmental impact assessments in the 1980s. Still, now it is explicitly included in the law itself (Van Schagen, 2024, pp. 25-26). It also offers civil society or private institutions the opportunity to initiate new spatial development processes, which could be considered a new dimension to the principle of subsidiarity.

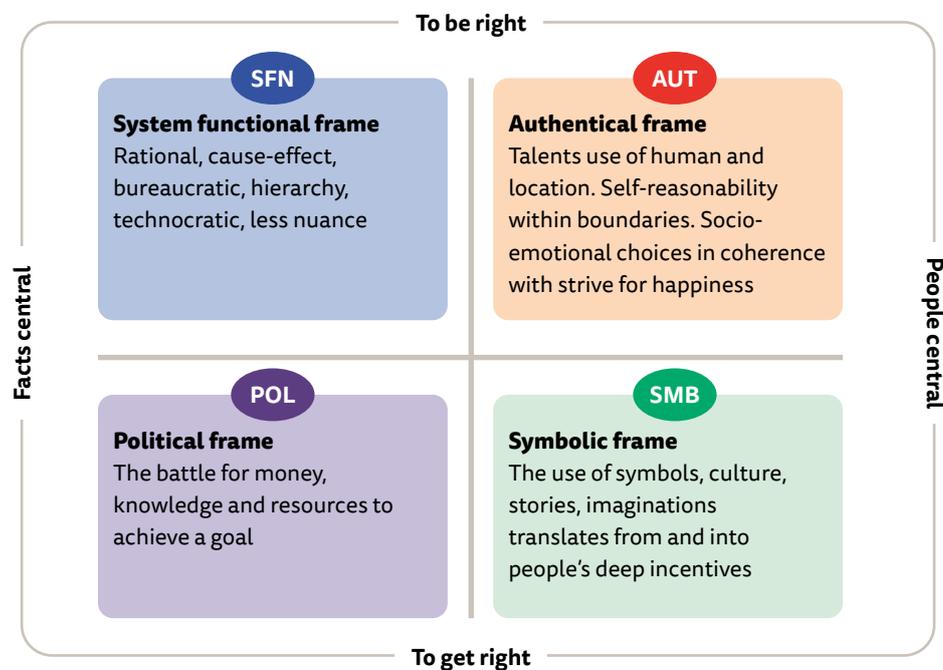
Second, the law's new focus on broader spatial considerations is embodied in the term 'ETFAL', which can be translated as a 'Balanced Allocation of Functions to Locations.' The human factor plays a more significant role here, as it is part of this broader assessment. With ETFAL, spatial decision-making shifts towards broad environmental impact. This relates to considering all relevant elements (including non-monetary) rather than just the more or somewhat measurable facts affecting the surrounding areas. This legal approach attempts to align spatially and legally with what the discipline and profession have been working towards for decades (Van Schagen, 2024, pp. 37, 48).

4 HOW TO HANDLE IN PRACTICE? A PRACTICAL FRAMEWORK AND TOOLS

Incorporating the human factor and broad environmental impact in practice leads to a more integrated spatial assessment, but not necessarily an easier one. The framing model by Van Schagen (2024) aims to give this complete assessment a practical structure (Figure 1). The frames in the model represent four approaches that can be combined in spatial planning processes. Here, the human factor and ETFAL also appear. The horizontal axis of the framing model distinguishes between focusing on people versus facts, and the vertical axis distinguishes factual correctness from gaining agreement through influence and persuasion. This results in four quadrants, based on the framing model of Bolman and Deal (2003), adapted and developed for spatial planning processes under the new Dutch land use law.

With the addition of peoples' drivers as a component of the symbolic frame, the full range of spatial decision-making elements becomes visible at a glance. Van Schagen (2024) enriches this with a selection of tools, making spatial decision-making methods directly applicable for each frame through established and scientifically substantiated methods. Van Schagen (2024) also presents milestone moments in the planning process timeline and a framing approach structure for a more promising planning process. This approach also starts from the human factor.

FIGURE 1
Four approaches to spatial
planning processes



Source: Van Schagen (2024)

4 CONCLUSIONS

The new Dutch land use law, the Environment and Spatial Planning Act (Omgevingswet), is not the promised simplification and acceleration of spatial legislation that was anticipated with the implementation of this law. Integrating 26 sectoral laws into one comprehensive law is not without its implementation problems, and neither does it necessarily lead to quicker procedures. Nor is the inception of the new law bringing about the anticipated 'paradigm shift' because spatial planning legislation has always sought to incorporate ongoing societal developments, as is the case with this new law. For many municipal officers working with this new framework legislation in their local bureaucracies, it may represent a significant shift in working as of January 2024.

Nonetheless, the new law is not without its changes. It demonstrates a greater focus on the informal part of the planning process. It allows a broader variety of stakeholders to be involved in spatial decision-making processes from the outset. Still, a well-developed plan with flexibility, evolving from broad to detailed over time, with early participation and room for more than one party's interests, has the best chance in the eventual formal legal planning process. This has always been the case, but such a plan can count on more support from the new Dutch land use law. In that sense, the Dutch planning paradigm is switching from facilitating 'good spatial planning' to a broad environmental assessment,

considering a balanced allocation of functions to locations (ETFAL) and more strongly considering the human factor in spatial development processes.

Overall, we argue one cannot speak (yet) of a paradigm shift, but on the other hand, you could argue whether one needs a one-moment-revolution for a structural change? Alternatively, it could be the beginning of a gradual breaking though patterns buildup in decades of Dutch planning culture. The new law, and later the jurisprudence, can help and force to push planners in the needed direction. The paradigm shift might be more alike to a change of course of a giant maritime vessel. If it turns out to be more like this, the steps towards fundamental changes might all start with gradually incorporating small practices by acting and weighing different options in the planning process as described in this article.

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