Urban Regions in the Delta

# Case Study Utrecht Station Area, the Netherlands: Legal Contextualisation as Suitable Solution for Air Quality?

Nina Bontje

NWO
Nederlandse Organisatie voor Wetenschappelijk Onderzoek

CONTEXT REPORT 9

Rijksoverheid

UNIVERSITY OF AMSTERDAM

To cite this report: Nina Bontje (2013) *Case Study Utrecht Station Area, the Netherlands: Legal Contextualisation as Suitable Solution for Air Quality?* CONTEXT Report 9. AISSR programme group Urban Planning, Amsterdam.

ISBN 978-90-78862-13-0
Layout by WAT ontwerpers, Utrecht
Published by AISSR programme group Urban Planning, Amsterdam





# Case Study Utrecht Station Area, the Netherlands: Legal Contextualisation as Suitable Solution for Air Quality?

Nina Bontje

# CONTEXT

**CONTEXT is the acronym for 'The Innovative Potential of Contextualising Legal Norms in Governance Processes: The Case of Sustainable Area Development'. The research is funded by the Netherlands Organisation for Scientific Research (NWO), grant number 438-11-006.**

**Principal Investigator**
Prof. Willem Salet
Chair programme group Urban Planning
University of Amsterdam

**Scientific Partners**
University of Amsterdam (Centre for Urban Studies), the Netherlands
Prof. Willem Salet, Dr. Jochem de Vries, Dr. Sebastian Dembski

TU Delft (OTB Research Institute for the Built Environment), the Netherlands
Prof. Wil Zonneveld, Dr. Bas Waterhout, Dr. Erik Louw

Utrecht University (Centre for Environmental Law and Policy/NILOS), the Netherlands
Prof. Marleen van Rijswick, Dr. Anoeska Buijze

Université Paris-Est Marne-la-Vallée (LATTS), France
Prof. Christian Lefèvre, Dr. Camille Gardesse

University of Liverpool (Heseltine Institute for Public Policy and Practice), United Kingdom
Prof. Alan Harding, Dr. Nicola Headlam

**Professional Partners**
DG Ruimte en Water Ministerie van Infrastructuur en Milieu, Provincie Noord-Holland, Provincie Flevoland, Stadsregio Amsterdam, Project Management Bureau Gemeente Amsterdam, Noordwaarts Gemeente Amsterdam, Hoogheemraadschap De Stichtse Rijnlanden, KWR Watercycle Research Institute, Institut d'Aménagement et d'Urbanisme Île-de-France, Manchester's Commission for the New Economy

# Contents

# 1 Introduction

'Utrecht, the dirtiest city of the Netherlands',[1] 'Air quality in Utrecht still insufficient',[2] 'Big cities will not retrieve the EU standards for nitrogen in 2015'. These are just some of the recent headlines on websites of Dutch local and national newspapers about the current air quality in Utrecht and other big cities in the Netherlands.[3] While research of the National Institute for Public Health and the Environment (*Rijksinstituut voor Volksgezondheid en Milieu*) has shown that annually 5,000 people die prematurely because of the bad air in their environment,[4] local governments do not manage to meet the EU standards for air quality as codified in Directive 2008/50/EC (hereafter Air Quality Directive).[5] This leads to a series of questions, such as: how is the Air Quality Directive implemented in Dutch legislation? Who is responsible for the achievement of the EU air quality norms? Is this the central government, the provincial governments or the local governments? And, more importantly, why are these governments unable to achieve the air quality norms of the Air Quality Directive?

The answer to the last question is actually quite simple: if the Netherlands wants to act in compliance with the Air Quality Directive, administrative bodies need to reject many authorisation requests for projects because of the effect of these projects on the air quality. While at the beginning of the 2000s hardly anyone in the Netherlands was aware of the EU air quality norms, by 2004 environmental activists started with litigations against authorisations that were granted without a direct test to the EU air quality norms. The consequence of these litigations was that many building projects could not be effectuated anymore. 'The Netherlands will be locked', was an often-heard slogan by that time.[6] The Dutch government therefore implemented title 5.2 into the Environmental Management Act (*Wet milieubeheer*) in 2007, which guarantees on the one hand that important projects can be accomplished and on the other hand that the air quality can improve. As part of this implementation, the National Cooperation Programme for Air Quality (*Nationaal Samenwerkingsprogramma Luchtkwaliteit*, hereafter: NCPAQ) has been adopted.[7] The Action Plan Air Quality Utrecht (hereafter: APAQU), as further specification of the NCPAQ, was implemented to improve air quality in Utrecht.

[1] http://dnu.nu/blog/6747-utrecht-vieste-stad-van-nederland, consulted on June 25, 2013.
[2] www.rtvutrecht.nl/nieuws/1000821, consulted on June 29, 2013.
[3] www.volkskrant.nl/vk/nl/2664/Nieuws/article/detail/3442910/2013/05/17/Grote-steden-halen-in-2015-EU-norm-voor-stikstof-niet.dhtml, consulted on June 25, 2013.
[4] Knol and Staatsen 2005.
[5] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.
[6] See for example: www.volkskrant.nl/vk/nl/2824/Politiek/article/detail/701919/2004/10/01/Van-Geel-Nederland-gaat-op-slot.dhtml, consulted on June 25, 2013.
[7] Article 5.12 of the Environmental Management Act.

## A specific case: the reconstruction of Utrecht's station area

The high percentage of particulate matter and nitrogen was also the problem by the time that plans were drawn to restructure Utrecht's station area in the nineties. The plans created did not consist of a simple reconstruction of a station. It were ambitious plans to 'connect the two halves of the city, increase the facilities available to the growing population of the city, to increase the allure and safety of the area, and to create a more pleasing transition between Hoog Catharijne and the old city centre.'[8] This was very ambitious in its scope.[9] There were, however, some problems that had to be fixed before the reconstruction plans could be effectuated, especially because of the polluted soil of the area and the expected further degradation of Utrecht's air quality. If all the necessary authorisations would be at once scrutinised in the light of the European air quality norms (as was required by the *Besluit Luchtkwaliteit 2005*), the authorisations could probably not have been granted. The project initiators therefore decided to split up the entire project into several smaller projects.[10] The idea was that each small project would have a very low contribution to the degradation of the air quality, so that for every single small project could be authorised. This research focusses on the application of air quality norms when authorisations are requested and more specifically on the application of air quality norms by the time that authorisations were requested for the reconstruction of Utrecht's station area. Both the current possibilities under the NCPAQ and APAQU and the previous possibilities will be considered.

## Flexible, contextualisable norms: effective sustainable area development?

This study is part of the wider research project 'The Innovative Potential of Contextualising Legal Norms in Processes of Urban Governance (CONTEXT): The Case of Sustainable Area Development'. CONTEXT's aim is to assess the opportunities for contextualisation of legal norms, develop strategies for the contextualisation of legal norms and understand the conditions for the contextualisation of legal norms. The hypothesis that underlies CONTEXT's aim is that general rules to guide sustainable area development while simultaneously enabling local actors to make optimal use of context specific considerations, resources and knowledge leads to effective sustainable area development.

My research will explore CONTEXT's hypothesis by using the reconstruction of Utrecht's station area as case study. The programmatic approach[11] of the NCPAQ and the APAQU can be seen as a way to contextualise the European air quality norms. This approach enables that the strict air quality norms of the EU can be applied on a local level in a way in which regional or local governments can still develop urban areas. In other words: the strict, higher norms have been translated into more flexible norms which can be applied in different situations at different places. The

[8] Buijze 2013, p. 3.
[9] Ibidem.
[10] Financial reasons and reasons of time and phasing also underlie the decision to split up big development projects into several smaller projects. I only focus on the air quality issue in this research.
[11] The programmatic approach is an approach were on the one hand projects are formulated that should be effectuated, while on the other hand measures are adopted that should secure the protection of the environment. The combination of projects and measures should secure that the environment not further deteriorates at the least (Koeman 2011, p. 391–400).

question is then of course whether these contextualised norms lead to a better situation in terms of air quality, enforceability of air quality norms and possibilities to grant authorisations than before the contextualisation of air quality norms. The main question of this research is therefore:

> *Are the rules formulated in title 5.2 of the Environmental Management Act experienced by the city of Utrecht as better executable and enforceable than the previous legal framework, and what are the consequences of those new rules for the air quality?*

It seems that in the 'old' situation of the *Besluit luchtkwaliteit 2005* (Air Quality Decision 2005), it was also possible to carry out projects that might interfere with air quality norms in some way, since a project could be split up in several small projects to make sure that the grander project could be effectuated. By doing so, a single project would not contribute to the air quality in a significant manner and only limited balancing measures would be required. This can, however, not count as contextiualisation, because this was a way to circumvent the norms rather than to realise underlying values in a way suitable to local interests. The question is, however, whether the current situation is better. The yardstick to conclude whether the situation after the implementation of flexible, contextualisable norms is better is twofold: better in terms of practicability and enforceability of the norms for the competent authority and better with regard to the air quality. The focus will be on the municipality of Utrecht as competent authority for authorisation grants.

## Sub-questions

This question will be approached by means of several sub questions. First, a description will be given of the previous legal framework for air quality in the Netherlands. The second sub-question pays attention to the application of the policies by the time the plans for the reconstruction of Utrecht's station area were made. These two sub-questions will then also be researched for the current legal framework. First of all, the current legal framework for air quality in the Netherlands will be described. Secondly, the way in which the current legal framework is applied in Utrecht's station area is researched. In this part, the question will be answered whether the current air quality norms are more workable and enforceable than the previous norms. Then both systems will be analysed, which leads to a description of the main differences. After that, the question will be answered whether the air quality has improved since the NCPAQ is enforced. I will explore whether prolongation of the NCPAQ is desirable on the basis of both its workability and its consequences for air quality. The answer to that last question is the stepping-stone to the conclusion.

## Methodology

Firstly, traditional legal research will be conducted to answer the descriptive questions with regard to the structure and substance of the legal frameworks for air quality. This means that several legal sources will be analysed, such as legislation, case law and authoritative opinions of legal scholars in the literature on developments in the field of air quality norms. The use of case law of the Dutch Council of State is necessary because that court has given authoritative opinions for administrative bodies granting authorisations for projects that might influence the air quality in a specific region.

Secondly, several reports on air quality will be used to answer the descriptive question whether the air quality has improved or deteriorated. Especially the reports of the National Institute for Public Health and the Environment (*Rijksinstituut voor Volksgezondheid en Milieu*) are suitable to answer the question whether the air quality has been improving. Even though it is difficult to research the direct relation between changes in legislation and the quality of Utrecht's air, it is possible to research this relation because of the obligation for local administrative bodies to annually report the state of affairs of the air quality in their region to the National Institute for Public Health and the Environment. The obligation for local administrative bodies to report was implemented together with the implementation of the NCPAQ to make sure that the suspended deadline for nitrogen and particulate matter could be reached.[12] The reports of the National Institute for Public Health and the Environment, which are the result of this obligation, give adequate information about the question whether the air quality is improving or not. While these reports do not show the direct relation between changed legislation and air quality, they do suggest to what extend the Netherlands is more in compliance with the Union's air quality norms since the legal framework has changed. The evaluation reports of the city of Utrecht with regard to the efficiency of their air quality policies are also useful with regard to this question. Utrecht has a great online archive with reports about the city's air quality, since air quality is a *hot topic* in Utrecht. The municipality's website states that 'those who live in Utrecht, know that healthy air is not obvious'.[13]

Thirdly, the empirical part answers the question whether the current legal framework based on the programmatic approach is more workable and enforceable than the previous legal framework. To this end qualitative empirical research in the form of interviews has been conducted. Kees van Oosten, a well-known obstructionist in Utrecht, has been interviewed as representative of the sceptical people with regard to the enforcement of air quality norms. Van Oosten is one of those people who is not convinced that the new policies of the NCPAQ prevent further degradation of the air quality. He has started many legal procedures with his *Stichting Stop Luchtverontreiniging Utrecht* (Stop Air Pollution Utrecht Foundation). Furthermore, he informs citizens in Utrecht who live next to crowded motorways about the dangers (cars are one of the main causes of the bad air quality in Utrecht) and he organises demonstrations. Three employees of the municipality of Utrecht have also been interviewed. The aim of an interview with them was to see whether air quality norms have increased and become better enforceable for local government compared to the old situation. Do the governors of the city and their civil servants experience the NCPAQ as a flexible tool which enables Utrecht's government on the one hand to accomplish several constructing projects in the city, while on the other hand securing the air quality? Or do they also see disadvantages with regard to the implementation of the NCPAQ? By means of these interviews it becomes clear for the specific case of Utrecht's station area whether the current air quality regulations are workable for initiators of building projects. In sum, by conducting several interviews with people with different backgrounds (an environmentalist and civil servants who are involved in the project), the whole picture of current air quality regulations can be presented. Any opinions in this research report are mine, not of the interviewees of the municipality.

[12] Before the implementation of the NCPAQ, it was clear that the Dutch air quality was not in compliance with the Union's air quality norms. The Dutch state therefore requested suspension of the deadlines (in first instance 2005 for particulate matter and 2010 for nitrogen) to reach the norms for nitrogen and particulate matter. See Gemeente Utrecht, *Gezonde lucht voor Utrecht. Naar een vernieuwd maatregelenpakket luchtkwaliteit. Uitvoeringsprogramma 2013-2015,* accessed through www.utrecht.nl/images/DSO/DSOmilieu/lucht/ORGLVUBijlage1.pdf, 14 May 2013, p. 5.
[13] www.utrecht.nl/smartsite.dws?id=244006&klikOuder=267313, consulted on July 22, 2013.

# 2 The previous legal framework for air quality

*This chapter introduces the European air quality legislation and explains the way in which the Netherlands in first instance implemented this in its national legal system.*

The EU standards for air quality were introduced in 1996 with the implementation of Directive 96/62/EG.[14] Three other directives were implemented based on this Directive.[15] Currently the Air Quality Directive is in force, which has replaced the four other directives.[16] The Air Quality Directive requires the Member States of the EU to meet the standards for the substances mentioned by the previous directives and added a norm for particulate matter.[17] There is a determined deadline to comply with the prescribed norm for each substance. Until that deadline each substance has a margin to exceed, which is annually determined. Each year this margin is lowered to ensure that Member States comply with the standards by the time of the deadline.[18] Member States are free to choose how they are going to meet the air quality requirements.[19]

The standards for nitrogen and particulate matter are the greatest problem for the Netherlands.[20] At the beginning of the 21st century the European Air Quality legislation was implemented in the Netherlands in the *Besluit luchtkwaliteit 2001* (Air Quality Decision 2001).[21] The Dutch government chose a strict coupling between the European air quality norms and spatial planning, while almost all other Member States did not establish such a strict link in their national legal orders.[22] This strict coupling means that each administrative decision on a project is tested to the air quality norms and is thereby not allowed to exceed one or more norms.[23] Why did the Netherlands chose for such a system? This can be explained by the fact that the Netherlands has a history of integrated policies and integrated decision-making.[24] In first instance no project developer was hindered by the *Besluit luchtkwaliteit 2001.* This, however, changed when the first interest organisations started to appeal against decisions which might not be in compliance with the European air quality norms. Because these appeals were very successful, one after another building project was stopped.[25] A lack of sufficient research by an administrative body was, however, still tolerat-

[14] Directive 1999/30/EC, Directive 2000/69/EC and Directive 2002/3/EC.
[15] Directive 2008/50/EC.
[16] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.
[17] Beijen 2012, p. 89.
[18] Ibidem.
[19] Tieleman c.s. 2007, p. 41.
[20] Beijen 2012, p. 90.
[21] *Stb.* 2001, 269.
[22] The only other exception is Sweden.
[23] Tieleman c.s. 2007, p. 41.
[24] *Kamerstukken II* 2005-2006, 30489, nr. 6, attachment 3, p. 3.
[25] De Vries 2010, p. 262.

ed by the Council of State.[26] The fact that the effectuation of some building projects was not possible anymore caused nevertheless a public debate about the desirability of the coupling between air quality norms and spatial planning.[27]

## *Besluit Luchtkwaliteit* 2005

The Dutch legislator revised the *Besluit luchtkwaliteit 2001* in 2005 and implemented the *Besluit luchtkwaliteit 2005*.[28] This new Decision was necessary because two new EU directives needed to be implemented.[29] The explanatory memorandum also mentions the importance of a new Decision because the Decision from 2001 caused some practical barriers. It mentions, for example, that administrative bodies could sometimes not grant an authorisation to build because of a local, small exceeding of the air quality norms, even though the project for which the authorisation was requested would in the end lead to an improvement of the air quality.[30] The *Besluit luchtkwaliteit 2005* kept, however, the direct link between spatial development and air quality. Every request for an authorisation was reviewed in the light of the air quality norms. However, not every exceeding of a norm would directly lead to the conclusion that an authorisation could not be granted anymore. One of the major changes of the *Besluit luchtkwaliteit 2005* was the implementation of the balance approach.[31]

The balance approach in article 7, paragraph 3 of the *Besluit luchtkwaliteit 2005* encompassed the possibility to temporarily deteriorate the air quality in an area, if the quality would improve on the long run (the so-called project balancing).[32] The reason for implementing the balance approach was the fact that it offers the possibility to keep on developing projects and at the same time improving the overall air quality. The approach was elaborated in detail in the *Ministeriële regeling voor de saldobenadering* (Ministerial regulation for the balance approach).[33] There were a couple conditions that should be met before the balance approach could be applied. First of all, the area where the air quality improves should have a geographical and functional link with the area where the project is developed. Secondly, the measures reducing the concentration of a specific substance should relate to that same substance that is in first instance increasing. Thirdly, the measures reducing the concentration of a substance should be performed at the same time as the performance of the project. Fourthly, it should be guaranteed that the compensation measures are really effectuated.[34] If the balance approach was used, it was of great importance that it was carefully substantiated by both qualitative and quantitative analysis of the consequences of the project and the compensatory measures. The majority of appeals against administrative decisions in relation to air quality legislation between 2002 and 2008 have been upheld because of a lack of

[26] Ibidem.
[27] *Kamerstukken II* 2005-2006, 30489, nr. 6, attachment 3, p. 4.
[28] *Stb.* 2005, 316.
[29] *Stb.* 2005, 316, p. 15 (explanatory memorandum).
[30] Ibidem. The memorandum states: 'Many spatial projects that would improve the air quality in the end could not go through. The social and economic consequences of the limited interpretation are sizeable and not necessary for a correct implementation of the EC-directive.' The Secretary of State does, however, not mention concrete examples, where it was actually likely that air quality would improve in the long run.
[31] Ministry of VROM, 'Besluit luchtkwaliteit 2005', VROM 6251, October 2006, p. 6.
[32] Beijen 2012, p. 90.
[33] *Stb.* 2006, 53.
[34] *Kamerstukken II* 2004-2005, 30175, nr. 8.

the required research.[35] So even though a guide was issued by the central government to explain to local governments how the balance approach could be applied, it remained quite complicated.[36]

[35] De Vries 2010, p. 262.
[36] Ministry of VROM, 'Handreiking Saldering luchtkwaliteit. Salderen onder het Besluit luchtkwaliteit 2005', VROM 6388. This guide was not legally binding; it was only a guide to advice municipalities on the concrete application of the balance approach.

# 3 The previous legal framework and Utrecht's station area

*In Chapter 2 it has been elucidated how the legal system for air quality was regulated in the Netherlands before the implementation of the NCPAQ. It were exactly these regulations with which the project group for the reconstruction of Utrecht's station area got confronted by the time they wanted to start with the development of the first phase of the project. This chapter sets out the way in which the project group dealt with these regulations by the time they were applying for the first authorisations at the city's government. The main question of this chapter is whether it was possible to effectuate the plans for a new station area under the old regulatory system for air quality.*

## A global zoning plan

In 2002 the municipality of Utrecht decided to implement the project for the restructuring of Utrecht's station area (by that time called the Utrecht City Project) via a global zoning plan. This global zoning plan was called the Master Plan Refurbishment Station Area (*Masterplan Herinrichting Stationsgebied*). A procedure for an environmental impact assessment (*milieueffectrapportage*) was already requested, when Utrecht's government changed in 2006 its strategy and decided to effectuate Utrecht City Project via a structure plan.[37]

There were two reasons to change the strategy of a global zoning plan for the effectuation of the Utrecht City Project. First of all, case law of the Council of State in 2004 showed a trend of rejection of spatial development plans if the effectuation of the plan would lead to deterioration of the air quality.[38] The project group was afraid that the global zoning plan would also be rejected in court, especially since some environmentalists in Utrecht were very successful in hindering spatial development plans in administrative court.[39] Secondly, the Council of State had created case law in which global zoning plans were rejected as instrument for extensive spatial development projects, mainly because such zoning plans could not reach an appropriate level of detail. The requested level of detail could not be reached in the zoning plan for Utrecht's station area, because of the project's size and the long term on which the project would run. It was because of this long

[37] www.commissiemer.nl/advisering/afgerondeadviezen/1307, consulted on 25 June 2013; Gemeente Utrecht, 'Masterplan Stationsgebied Utrecht. Samenvatting', accessed through www.utrecht.nl/images/OGU/pos/pdf/Samenv2.pdf, on 25 June 2013.
[38] Gemeente Utrecht, 'Structuurplan Stationsgebied', December 2006, accessed through www.utrecht.nl/images/OGU/pos/pics/Structuurplan%20stationsgebied%20December%202006%20nav%20raad.pdf on 25 June 2013, p. 5.
[39] As stated in interviews with both Van Oosten and civil servants of Utrecht city.

term not desirable to be obliged to have a very detailed plan, since adjustments of the plan were expected to be necessary because of, for example, changes in policies and legislation.[40]

## The structure plan

On December 14, 2006, Utrecht's town council (*gemeenteraad)* determined the Structure Plan Station Area as legal-planning instrument to secure the progress of the master plan. This structure vision only contained the headlines of the project and formed the basis to implement all the different sub-projects (such as the development of a casino, a mega cinema and a music ace[41]). The project group was in favour of this instrument, since citizens cannot appeal against structure plans.[42] The intention was that the smaller projects would be implemented by means of article 19-procedures. Article 19 of the (old) Spatial Planning Act (*Wet op de Ruimtelijke Ordening*) regulated the exemption for spatial plans to become part of a zoning plan even though the specific plans do not actually fit into the zoning plan.[43] The project initiators expected that all the smaller sub-projects could become part of the zoning plan via an article 19-procedure, since every individual project would only have a marginal contribution to the deterioration of the air quality.[44] Only limited measures should then be proposed to compensate that marginal contribution. Those measures would not have been enough if the whole would have been implemented in once.[45] If all the sub-projects would pass the article 19-procedures and would become *res judicata*, those projects could be put together in one or more zoning plans *afterwards*. The municipality of Utrecht stated: 'The air quality issues are not solved this way, but the issues are placed in article 19-procedures and thereby possibly more manageable.'[46]

## The implementation

The planned article 19-procedures were in first instance effectuated, since all sub-projects became subject to the article 19-test. Next to that, the municipality applied the balance approach ex. article 7, paragraph 3, of the *Besluit luchtkwaliteit 2005* (see page 11). It tried to prove that coherent measures would be taken to compensate the project's influence on the air quality. The main measures that were put forward to balance were environmental zoning and the introduction of clean busses. Extensive reports were needed to prove the effectiveness of these measures.[47]

In first instance, the project group was relatively successful in implementing the sub-projects with article 19-procedures and the application of the balance approach. The interest group of Kees van Oosten only managed to stop the building of the Vredenburg for a while, but most sub-decisions

[40] Ibidem.
[41] www.commissiemer.nl/advisering/afgerondeadviezen/1307, consulted on June 25, 2013
[42] Interview with civil servants of Utrecht city.
[43] Tollenaar 2005, p. 16.
[44] De Vries 2010, p. 56.
[45] Note that this is thus not a case of 'good' projects being blocked because of short-term negative effects even though air quality would improve in the long run.
[46] Gemeente Utrecht, 'Structuurplan Stationsgebied', December 2006, accessed through www.utrecht.nl/images/OGU/pos/pics/Structuurplan%20stationsgebied%20December%202006%20nav%20raad.pdf on June 25, 2013, p. 5. NB: article 19 of the Spatial Planning Act (old) has been expired on 1 July 2008. See: *Stb.* 2006, 566.
[47] Schippers and Besselink have written a vast amount of articles on the complexity of the balance approach on a project basis. See Schippers and Besselink, *Gst*. 2009/75, *Gst*. 2007/121, *Gst*. 2006/7256, *Gst*. 2005/110.

could be taken with support of extensive reports and documentation.[48] The worries of the project group were nevertheless increasing. All over the country, one spokes about the lock on the building sector. The project initiators became scared that their project would also be stopped in court. For them, the NCPAQ came as a gift.[49]

[48] Interview with Van Oosten.
[49] Interview with civil servants of Utrecht city.

# 4 The current legal framework for air quality

*The two previous chapters have showed the possibilities and barriers of the* Besluit Luchtkwaliteit *2001 and 2005. By the time the* Besluit luchtkwaliteit 2005 *was enacted, there were already plans to radically change the Dutch air quality legislation by implementing the* Wet Luchtkwaliteit *(Air Quality Act) into the Environmental Management Act.*[50] *This chapter will introduce the Air Quality Act.*

## Background

As explained in the previous chapter, the *Besluit luchtkwaliteit 2001* and the *Besluit luchtkwaliteit 2005* contained a strict coupling between air quality norms and spatial planning. This direct testing of air quality norms if authorisations for spatial development plans were requested was, as mentioned, problematic. Many building projects were stopped because of the damage they would cause to the air quality. If building projects were not stopped, this was because an extensive amount of reports and other documents were able to prove the effectiveness of compensatory measures (the balance method). This did not only require a great effort of project initiators, it also decreased the legal protection of citizens, since they also had to come up with expert reports which opposed the project initiator's reports if they wanted to argue against an authorisation.[51] The implementation of the Air Quality Act aimed to solve these problems by introducing the NCPAQ.[52] The current NCPAQ contains a flexible instead of a strict coupling between air quality norms and spatial planning.[53]

Next to the implementation of the NCPAQ, the Dutch government asked for derogation for both particulate matter and nitrogen in 2008, which was granted in 2009. The new deadlines to meet the required air quality became June 2011 for particulate matter and January 2015 for nitrogen.[54]

[50] *Stb.* 2005, 316, p. 16 (explanatory memorandum); Ministry of VROM, 'Besluit luchtkwaliteit 2005', VROM 6251, October 2006, p. 14; Beijen 2012, p. 91.
[51] One must note that this problem is also present in other fields of Dutch environmental law that are at stake by spatial development, such as rules on noise.
[52] *Stb.* 2007, 414.
[53] www.infomil.nl/onderwerpen/klimaat-lucht/luchtkwaliteit/vragen-antwoorden/nsl/@112980/flexibele-koppeling/, consulted June 24, 2013.
[54] www.compendiumvoordeleefomgeving.nl/indicatoren/nl0237-Nationale-luchtkwaliteit%3A-overzicht-normen.html?i=14-65.

# Air Quality Act

The Air Quality Act has been implemented in 2007 and added title 5.2 in the Environmental Management Act. The core of this title is the programmatic approach, which should enable the Netherlands to reach the air quality norms as soon as possible.[55] Article 5.12 of the Environmental Management Act implements the NCPAQ on a national level. The NCPAQ runs from August 2009 until August 2014. It contains the allowed activities that significantly contribute to the deterioration of the air quality. On the other hand, the program contains measures to improve the air quality. The way in which the testing of spatial plans to air quality norms is currently regulated in the NCPAQ is called program balancing instead of project balancing (as with the *Besluit Luchtkwaliteit 2005*). The level on which spatial development plans are balanced with compensatory measures is thus on a programmatic level instead of on a project level.

All projects mentioned in the NCPAQ will get the necessary authorisations, since their influence on the air quality is compensated beforehand by the measures mentioned in the NCPAQ. The project will not be scrutinised individually with regard to its influence on the air quality anymore. The NCPAQ's projects are relatively big projects in scope.[56] They become part of the NCPAQ after a NCPAQ-partner has registered the project at the NCPAQ.[57] If a project is not mentioned in the NCPAQ, it can only get an authorisation if it does not contribute to the deterioration of the air quality in a meaningful way (see the *Besluit niet in betekenende mate* (Decision not in a meaningful way) and the *Regeling niet in betekenende mate* (Regulation not in a meaningful way)) or if it does not deteriorate the air quality at all.[58] Article 5 of the *Besluit niet in betekenende mate* is an anti-accumulation rule, which aims to prevent that larger projects are split up into several smaller projects to remain under the not in a meaningful way-margin.[59]

This practice based on the NCPAQ has been approved in Dutch administrative court.[60] This approval has also been repeated by judges in cases in which decisions were challenged that might harm Utrecht's air quality. The judge has, for example, referred to the European Commission's statement in its decision to allow the suspension of the deadlines for the Netherlands, since the Commission has therein stated its belief that the NCPAQ is sufficient to reach the requested air quality level in 2014.[61]

# Monitor obligation

Article 5.14 of the Environmental Management Act contains a monitor obligation for the NCPAQ-partners to secure that the NCPAQ's goals will be reached. Every local government has an obligation to report to the ministry of Infrastructure and Environment (hereafter: ministry of I and E)

[55] Beijen 2012, p. 91.
[56] See for an overview of the projects that were part of the NCPAQ in 2011: www.nsl-monitoring.nl/data/public/NSL%202011%20Onderbouwingen%20Projecten.pdf, consulted on July 29, 2013.
[57] Van Oosten 2012, p. 22. The NCPAQ-partners are municipalities, provinces and the some bodies of the national government. See: www.infomil.nl/onderwerpen/klimaat-lucht/luchtkwaliteit/nsl/monitoring/doet/, consulted on July 29, 2013.
[58] Beijen 2012, p. 91-92.
[59] De Vries 2010, p. 272.
[60] ABRvS 31 March 2010, *AB* 2011, 56 and ABRvS 12 January 2011, *AB* 2011, 57.
[61] ABRvS 14 April 2010, ECLI:NL:RVS:2010:BM1058, paragraph 2.7.2 and Rb. Utrecht 14 April 2010, ECLI:NL:RBUTR:2010:BM1072.

the progress of projects and measures and any changes.[62] Furthermore, they have to report the most recent information about the sources of air pollution for which those governments are responsible, such as data about traffic intensities.[63] The Monitoring Desk of the ministry of I and E gathers all the data as reported by local governments. This Desk annually charts the progress of the NCPAQ and the air quality. Based on these reports, the NCPAQ and the programs on a decentralised level can be adjusted if necessary.

[62] www.nsl-monitoring.nl/monitoring-nsl/monitoring-nsl/, consulted on July 29, 2013.
[63] Ibidem.

# 5 The current legal framework and Utrecht's station area

*Now that the current legal framework is clear, an important question is what the influence of the implementation of this framework has been on the realisation of the restructuration plans of Utrecht's station area. This chapter will focus on the question whether the NCPAQ has eased the realisation of the master plan.*

## NCPAQ as solution

Chapter 3 ended with the statement that the NCPAQ came as a gift for the effectuation Utrecht's station area reconstruction. Representatives of Utrecht city have mentioned that the reconstruction of Utrecht's station area could not have been continued if the NCPAQ was not introduced. The NCPAQ has facilitated the realisation of the reconstruction of Utrecht's station area.[64]

However, all the authorisations that were already requested before the implementation of the NCPAQ were also granted. The authorisation requests were properly substantiated and all sub-projects that would influence the air quality were correctly balanced.[65] It is thus not the case that the obtainment of authorisations was impossible before the implementation of the NCPAQ. The main advantage of the procedure after 2007 is, however, that 'reports as thick as telephone books' are no longer necessary to get valid authorisations, because there is no need for a case-by-case evaluation of the effects and how they can be compensated.[66] In that sense, the current legal framework has led to more workable norms and thus to norms that enable more effective area development.

## A flawless solution?

One could question whether the NCPAQ is really such a flawless solutions as it seems. In terms of workability and practicability, it is. The NCPAQ took away the obligation to come up with extensive air quality research. Instead, the reconstruction of Utrecht's station area is secured in the NCPAQ and the city of Utrecht only has to formulate measures in the APAQU. Those measures are part of the provincial measures, which are part of the measures of the central government.

[64] Interviews with civil servants of Utrecht city.
[65] Ibidem.
[66] Ibidem.

Utrecht thus actually only has the obligation to execute those measures (and change the package of measures if necessary), which is quite easy compared to the previous obligations. The most important measure which the city of Utrecht had to execute in first instance are the so-called *verkeersknips* (limitations on the amount of cars that can enter the city centre).[67]

The workability and practicability are, however, only one side of the scale. On the other side, there is the actual air quality. The NCPAQ, as part of the Air Quality Act, was not only introduced to create more workable air quality norms. The main aim of the Air Quality Act is to reach the suspended deadlines for both particulate matter (June 2011) and nitrogen (January 2015)[68] as required by the Union Directive by the time the NCPAQ expires (August 2014).[69] Chapter 7 aims to answer the question whether the NCPAQ is a successful instrument to reach that end.

One must also note the possibility of legal protection against the NCPAQ and the APAQU is null. Since the practice of the programmatic approach in the NCPAQ has been approved in Dutch administrative court, one cannot appeal against decisions that are part of the program.[70]

[67] By the time of writing, the city government has just decided to implement the *Uitvoeringsprogramma gezonde lucht voor Utrecht* (Implementation Program Healthy Air for Utrecht). This is a package of additional measures to improve the city's air quality, which focusses on environmentally zoning.
[68] *Kamerstukken II* 2005-2006, 30489, nr. 3, p. 2-4.
[69] NCPAQ, accessed through www.infomil.nl/onderwerpen/klimaat-lucht/luchtkwaliteit/nsl/ on July 29, 2013.
[70] ABRvS 31 March 2010, *AB* 2011, 56 and ABRvS 12 January 2011, *AB* 2011, 57.

# 6 Comparison of the two systems

*This chapter shows the main differences between the previous and current legal system. This analysis is based on the description of both systems and on the exposition of the way in which both systems have played a role in the development of Utrecht's station area in the previous chapters.*

## Facilitating development

The facilitation of development has been improved with the implementation of the current system. While the *Besluit luchtkwaliteit 2001* and *2005* required extensive research reports on the consequences of a project and the measures that would come along, the Air Quality Act with its NCPAQ has regulated most of these issues in advance. Based on the NCPAQ, every province has drafted its Action Programme, on which every municipality bases its local Action Program. Only considerations with regard to less interfering projects, namely the question whether a specific project would contribute to the deterioration of the air quality in a meaningful way or not, still need to be explicated by an administrative body. The *Regeling niet in betekenende mate,* however, already contains a list with several smaller developments that by all means do not contribute in a meaningful way (based on article 5.20 of the Environmental Management Act and article 2, paragraph 2, of the *Besluit niet in betekenende mate*).[71] In such a case a local administrative body does not even have to consider whether a project stays below the not in a meaningful way-requirement.[72] In sum, spatial development is way better facilitated under the new system compared to the old one.

## Competence

An important change that came along with the implementation of the Air Quality Act is that the question whether spatial development projects can be effectuated because of their possible influence on the air quality is mainly considered by the central government. Local actors do not have to make this consideration. For example, the measures which Utrecht has formulated in the APAQU are only an elaboration of the large NCPAQ, which has been formulated by the central government.[73] The reconstruction of Utrecht's station area has been secured in the NCPAQ, which makes it easier for Utrecht's government to grant the necessary authorisations. This was different

[71] *Stb.* 2007, 218.
[72] Beijen c.s. 2012, p. 92.
[73] Robbe c.s. 2008, p. 175-176.

by the time the *Besluit luchtkwaliteit 2005* was in effect, since that regulation placed the responsibility for the balance approach at local governmental bodies.[74] In terms of competence, there is a shift from the local level to the national level.

## Underlying values

If one looks to the underlying values of the *Besluit luchtkwaliteit 2001, Besluit luchtkwaliteit 2005* and the Air Quality Act, there is a remarkable difference visible between the first *Besluit* and the current Act. While the *Besluit luchtkwaliteit 2001* mainly aimed to reach the air quality norms as set out by the European Directive, the Air Quality Act also tries to prevent large obstacles for spatial development plans. Even though the explanatory memorandum of the Air Quality Act presents the improvement of the air quality as main aim, it seems that the Act is actually more concerned with spatial development since all kind of projects can be secured with its regime. Of course the programmatic approach also contains compensatory measures, but one might ask whether this approach is suitable to improve the air quality in the end. For example, *rekening rijden* (a measure whereby car drivers have to pay for driving on some appointed roads) was part of the initial NCPAQ. This measure was, however, not implemented because of political resistance. The spatial projects which would be compensated by that measure have, however, just been developed. The aim of the Air Quality Act is to better regulate the subject of air quality instead of improving air quality as such.

## Legal procedures

Another difference is the possibility of legal protection if one wants to appeal against a decision that might be striking with air quality legislation. Between 2002 and 2008, the Council of State has ruled 550 times about disputes with regard to the *Besluit luchtkwaliteit 2005*.[75] Since the implementation of the Air Quality Act it is difficult to start a successful legal procedure against a decision that might be striking with the air quality legislation, because the NCPAQ with its projects has been accepted by the court as instrument to meet the Union deadlines by time.

## Project balancing versus program balancing

Finally, also the kind of rules is different. Under the old legal framework, administrative bodies had to balance each project with regard to the compensatory measures that would be taken. The new system has led to a switch from project balancing to program balancing. Nowadays, one large programme has been implemented which contains all extensive spatial development projects and all necessary compensatory measures. Balancing is thus only required on a programmatic level.

[74] Robbe c.s. 2008, p. 170; Ministry of VROM, 'Besluit luchtkwaliteit 2005', VROM 6251, October 2006, p. 6.
[75] De Vries 2010, p. 262.

# 7 Air quality

*It will be assessed in 2015 (the 'measurement year') whether the Union norms are reached. This means that it will take until 2016 before one will know whether the NCPAQ has been sufficient to reach the air quality norms. It is, however, possible to make a prediction on the basis of the annual NCPAQ monitor reports.*

## Improvement or deterioration?

The minister of Infrastructure and Environment has recently stated that the Dutch air quality is overall improving, while at the same time several big cities are still struggling to lower the presence of particulate matter and nitrogen in the air of its city centers.[76] Utrecht is definitely one of the cities which struggles to reach the requested air quality level.[77] Utrecht's government is aware of the bad state of affair, since it has recently drafted the *Uitvoeringsprogramma Gezonde Lucht voor Utrecht* (Implementation Program Healthy Air for Utrecht).[78] This Implementation Program aims to effectuate additional measures to improve Utrecht's air quality, especially since the National Institute for Public Health and the Environment's reports have shown that the current decrease of particulate matter and nitrogen in Utrecht is too slow to reach the Union norms before 2015.[79] The NCPAQ monitor of 2012 has even designated more locations in Utrecht with overruns than in 2011.[80] This plan has been presented to the town council last June.

It can thus be concluded that the initial NCPAQ and the following APAQU are in first instance insufficient to reach the Union requirements for Utrecht's air quality before 2015. Will the complementary measures change this worst case scenario? Utrecht's government does state so in their Implementation Program.[81] Kees van Oosten, however, posted on the website of his *Stichting Stop Luchtverontreiniging Utrecht* the exact opposite opinion.[82] According to him, it is not only unsure whether Utrecht's government will manage to reach the required norms, it is also questioned if the reported data is representative.[83] The fact that the method to report data is very

[76] *Kamerstukken II* 2012/13, 30 175, nr. 160, p. 1
[77] www.utrecht.nl/smartsite.dws?id=324924, consulted on July 29, 2013.
[78] Gemeente Utrecht, *Gezonde lucht voor Utrecht. Naar een vernieuwd maatregelenpakket luchtkwaliteit. Uitvoeringsprogramma 2013-2015,* accessed through www.utrecht.nl/images/DSO/DSOmilieu/lucht/ORGLVUBijlage1.pdf, May 14, 2013.
[79] *Gezonde lucht voor Utrecht* 2013, p. 7.
[80] *Gezonde lucht voor Utrecht* 2013, p. 8.
[81] *Gezonde lucht voor Utrecht* 2013, p. 17.
[82] www.stopluchtverontreiniging.nl/?p=392, date June 1, 2013, consulted on July 29, 2013.
[83] Van Oosten 2012, p. 25. The question whether the data which Utrecht reports to the NCPAQ monitor is reliable is beyond the scope of this research. I refer to Van Oosten's book for his opinion. For extern, independent research commissioned by Utrecht city on this topic, see DHV B.V., 'Second opinion invoergegevens luchtkwaliteitsberekeningen gemeente Utrecht. Invoergegevens Monitoring 2011', Gemeente Utrecht 2012, accessed through

inimitable suggests a bad state of affairs in terms of procedural justice. It is difficult to judge which party is right and which party is wrong with regard to the status quo of the air quality. It is, however, clear that both by the time the NCPAQ was implemented and by the time of writing the air quality of Utrecht is still far from where it should be in over a year.

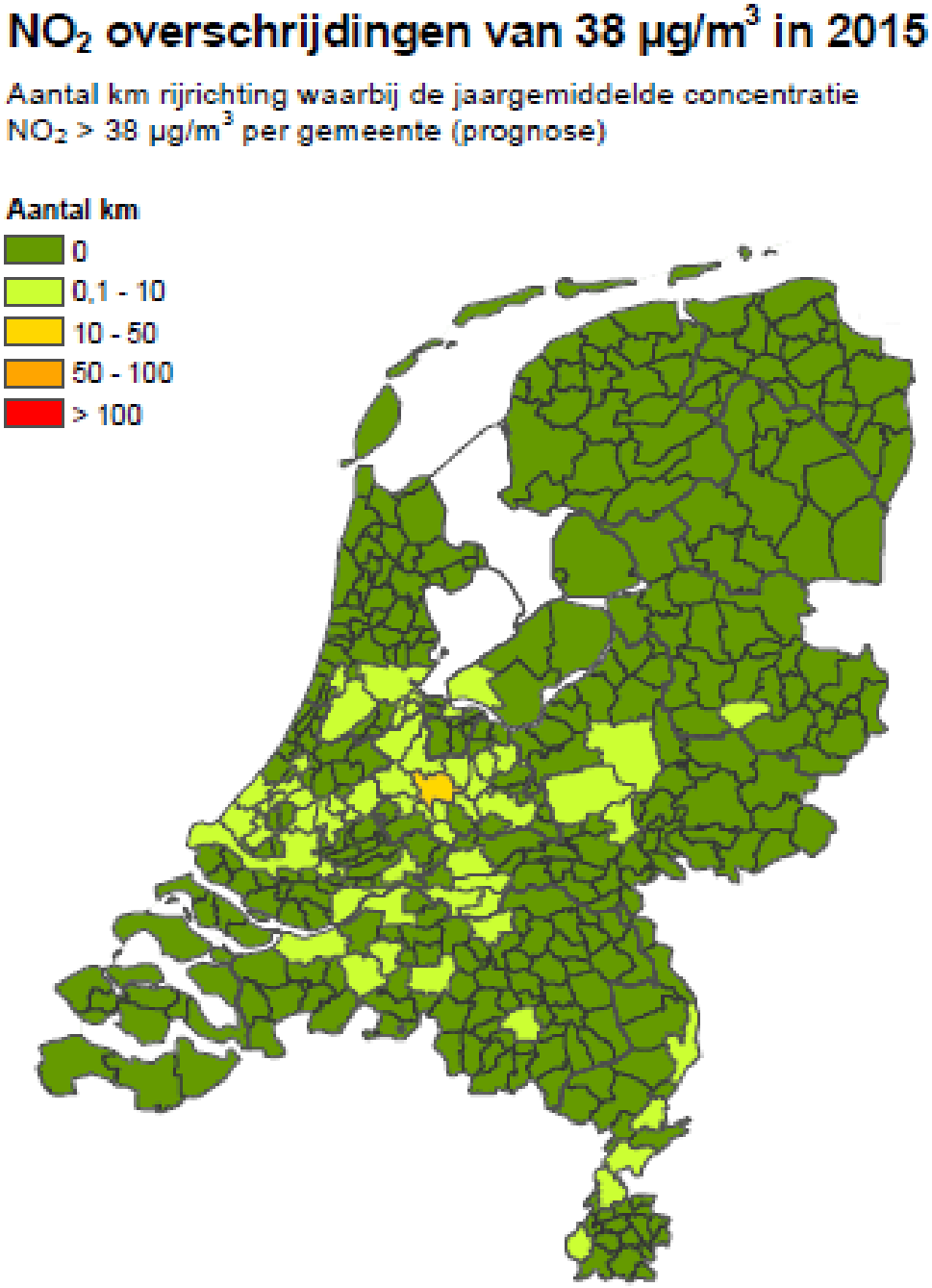


*Fig. 1. The expected nitrogen overruns in 2015*[84]

www.utrecht.nl/CoRa/BGS/Commissiebrieven/2012/DHV%20-%20Rapport%202nd%20invoergegevens%20Luchtkwaliteit.pdf, consulted on October 12, 2013.

[84] www.utrechtanders.nl/?paged=2, consulted on July 29, 2013.

# Back to square one?

As mentioned, the NCPAQ runs until August 2014. According to Utrecht city's government it is necessary to prolong the NCPAQ after that to guarantee the continuation of the reconstruction.[85] Recently the minister of Infrastructure and Environment has pronounced his intention to prolong the NCPAQ.[86] The governors of five big cities, including Frits Lintmeijer of Utrecht, have lately sent a letter to the minister of Infrastructure and the Environment, in which they support the prolongation of the NCPAQ and in which they request for more measures on the national level.[87]

The first phase of the reconstruction is by the time of writing almost finished. When the second phase of the reconstruction projected is started, that part of the master plan need to be translated into multiple decisions. A whole bunch of authorisations will be requested and an environmental impact assessment should be conducted again. The provision of those authorisations might become difficult if the NCPAQ is not extended. In that case the legal framework for air quality is back to square one. Again, extensive air quality researches should be conducted to prove the limited effects on the air quality.[88] The city government is scared that the continuation of the reconstruction would then be hindered in court by environmentalists.[89]

[85] Interview with civil servants of Utrecht city. It has been argued that the NCPAQ should be prolonged as long as additional measures are taken to assure compliance with the air quality norms in 2015.
[86] www.infomil.nl/onderwerpen/klimaat-lucht/luchtkwaliteit/nsl/verlenging-nationaal/, consulted on July 29, 2013.
[87] E. Wiebes c.s., Letter to the minister of Infrastructure and Environment, 26 March 2013.
[88] Interview with civil servants of Utrecht city. Article 19-procedures are not possible anymore, since this article has expired (see p. 12).
[89] There is, however, not a great chance that the European Commission will impose a fine on the Netherlands, since the Netherlands an example for the rest of Europe. This because the Netherlands is one of the few Member States with a coupling between air quality norms and spatial planning.

# 8 Conclusion

*The central question of this research paper is: are the rules formulated in title 5.2 of the Environmental Management Act experienced by the city of Utrecht as better executable and enforceable than the previous legal framework, and what are the consequences of those new rules for the air quality? I will shortly summarise the findings above before answering the main question.*

The interviewees of Utrecht city stated unequivocally that the rules formulated in title 5.2 of the Environmental Management Act has led to better executable and enforceable air quality regulations because of a lessened administrative burden. The NCPAQ has facilitated that the first phase of the reconstruction of Utrecht's station area could be executed without obstacles because of the applicable air quality regulations.

The air quality has, however, not significantly improved since the implementation of title 5.2 of the Environmental Management Act. Even though reports of the National Institute for Public Health and the Environment do show some improvement of the Dutch air quality, the inner city of Utrecht still struggles with a too high percentage of nitrogen and particulate matter in its air. One can thus conclude that the rules formulated in title 5.2 of the Environmental Management Act are indeed better executable and enforceable than the rules on air quality of the *Besluit luchtkwaliteit 2001* and *2005*, while the air quality is still not really improving with the current system.

That conclusion should be put in a broader context, namely the context of the research on contextualisable, flexible norms. Are the contextualisable norms of title 5.2 of the Environmental Management Act an advantage in terms of *effective sustainable* area development in relation to the more static norms of the *Besluit luchtkwaliteit 2001* and *2005*? Both under the old and new regulatory system it has been possible to obtain authorisations for the reconstruction of Utrecht's station area. The main difference between the two regulatory frameworks is the fact that the obtainment of authorisations for air quality influencing projects was more difficult under the old legal framework. Every authorisation request for a project with consequences for the air quality needed to be substantiated by air quality research reports to prove the lack of consequences for the air quality or to prove the way in which the air quality on the long term would improve because of compensatory measures (balancing). The fact that the NCPAQ of the current legal framework offers the possibility to develop areas more easily (and thus more *effective*), does not mean this is also more *sustainable*. The fact that the *Besluit luchtkwaliteit 2005* required an extensive amount of reports for spatial plans might even lead to more sustainable area development than the programmatic approach of the NCPAQ. As mentioned in one of the reports of Utrecht by that time: 'The air quality issues are not solved this way […], but the issues are […] possibly more manageable.'[90]

[90] Structuurplan Stationsgebied 2006, p. 5.

It must also be noted that there is a difference between the two legal frameworks with regard to who is doing the contextualising. The programmatic approach of the NCPAQ leads to a system where the most important considerations have already been made on a national level, while the balance approach was applied by the local governments. With the current system, local spatial development is based on a local Action Program, which is a result of the national programme. There is thus limited space for local actors to make optimal use of context specific considerations.[91] In that sense, it should even be questioned whether the programmatic approach in the Air Quality Act is a form of contextualisation as such. However, it must be noted that local governments not even want to have discretion to contextualise, because municipalities' governments are satisfied with the fact that there is a lessened administrative burden since the implementation of the current legal framework.[92]

Effective area development and sustainable area development thus do not go hand in hand with the application of the flexible, contextualisable norms of the programmatic approach in title 5.2 of the Environmental Management Act. Furthermore, the competence to contextualise is not even desired by local governments with regard to air quality legislation.

[91] One of the premises of contextualisation is that higher norms can be interpreted and applied on a local level by making use of the context specific circumstances (see p. 7-8).
[92] Note that this does not mean that local governments are satisfied with the state of affairs of the air quality. This conclusion only focuses on the question whether local governments experience the Air Quality Act's norms as better executable and enforceable.

# Bibliography

## Literature


Beijen 2012
B.A. Beijen (ed.), *Hoofdlijnen milieubestuursrecht*, Den Haag: Boom Juridische uitgevers 2012.

Buijze 2013
A. Buijze, 'Utrecht's Station Area. How PPPs restructured a station, a shopping mall land the law', http://context.verdus.nl/upload/documents/CONTEXT-Report-4.pdf, 2013.

De Vries 2010
H. de Vries (ed.), *Praktijkboek bestemmingsplannen en procedures*, Den Haag: Sdu Uitgevers 2010.

Koeman 2011
N. Koeman, 'De programmatische aanpak in het omgevingsrecht', in: A.A.J. de Gier c.s. (eds.), *Goed verdedigbaar. Vernieuwing van bestuursrecht en omgevingsrecht*, Deventer: Kluwer 2011, p. 391-400.

Robbe c.s. 2008
J. Robbe c.s., *Europees milieurecht voor de gemeentelijke praktijk*, Den Haag: Sdu Uitgevers 2008.

Schippers and Besselink 2009
E.C.M. Schippers and H.J. Besselink, 'Luchtkwaliteit. Weer nieuwe regels; het kader compleet?', *Gst.* 2009, 75.

Schippers and Besselink 2007
E.C.M. Schippers and H.J. Besselink, 'Luchtkwaliteit, de finale?', *Gst.* 2007, 121.

Schippers and Besselink 2006
E.C.M. Schippers and H.J. Besselink, 'Luchtkwaliteit. Een tussenstand', *Gst.* 2006, 107.

Schippers and Besselink 2005
E.C.M. Schippers and H.J. Besselink, 'Luchtkwaliteit. Nieuwe ronde, nieuwe kansen?', *Gst.* 2005, 110.

Tieleman c.s. 2007

J.R.C. Tieleman, A.R.G. van Dijk-Barkmeijer and H.F.T. Pennarts, *Recht op schone lucht. Een analyse van mogelijkheden tot ontkoppeling van ruimtelijke ordening en luchtkwaliteit,* Rotterdam: IBR 2007.

Tollenaar 2005
A. Tollenaar, *Vrijstellingsbeleid op grond van artikel 19 WRO,* Groningen: Universiteitsdrukkerij Rijksuniversiteit Groningen 2005.

Van Oosten 2012
K. van Oosten, *Gebakken lucht. Tien jaar luchtkwaliteitsbeleid in Nederland: over de versoepeling van regelgeving en het schoonrekenen van de lucht*, ISBN 978 90 812263 0 1, 2012.

Wiebes 2013
E. Wiebes c.s., Letter to the minister of Infrastructure and Environment, 26 March 2013.

# Reports

DHV B.V.
DHV B.V., 'Second opinion invoergegevens luchtkwaliteitsberekeningen gemeente Utrecht. Invoergegevens Monitoring 2011', Gemeente Utrecht 2012, accessed through www.utrecht.nl/CoRa/BGS/Commissiebrieven/2012/DHV%20-%20Rapport%202nd%20invoergegevens%20Luchtkwaliteit.pdf on October 12, 2013.

National Institute for Public Health and the Environment
A.B. Knol and B.A.M. Staatsen, *Trends in the environmental burden of disease in the Netherlands 1980-2020*, National Institute for Public Health and the Environment, report 500029001/2005, 2005.

# Official publications

## Gemeente Utrecht

Gemeente Utrecht, *Gezonde lucht voor Utrecht. Naar een vernieuwd maatregelenpakket luchtkwaliteit. Uitvoeringsprogramma 2013-2015,* accessed through www.utrecht.nl/images/DSO/DSOmilieu/lucht/ORGLVUBijlage1.pdf, May 14, 2013.

Gemeente Utrecht, 'Structuurplan Stationsgebied', December 2006, accessed through www.utrecht.nl/images/OGU/pos/pics/Structuurplan%20stationsgebied%20December%202006%20nav%20raad.pdf on June 25, 2013.

Gemeente Utrecht, 'Masterplan Stationsgebied Utrecht. Samenvatting', accessed through www.utrecht.nl/images/OGU/pos/pdf/Samenv2.pdf, on June 25, 2013.

## *Kamerstukken* (official publications of the Dutch parliament)

*Kamerstukken II* 2012-2013, 30 175, nr. 160.
*Kamerstukken II* 2005-2006, 30489, nr. 3
*Kamerstukken II* 2005-2006, 30489, nr. 6, attachment 3.
*Kamerstukken II* 2005-2006, 30489, nr. 6, attachment 3.
*Kamerstukken II* 2004-2005, 30175, nr. 8.

## Ministry of VROM (the current ministry of I and E)

Ministry of VROM, 'Besluit luchtkwaliteit 2005', VROM 6251, October 2006.

Ministry of VROM, 'Handreiking Saldering luchtkwaliteit. Salderen onder het Besluit luchtkwaliteit 2005', VROM 6388.

NCPAQ
NCPAQ, accessed through www.infomil.nl/onderwerpen/klimaat-lucht/luchtkwaliteit/nsl/ on July 29, 2013.

## Staatsblad (gazette with the official publications of the central government)

*Stb.* 2007, 414.
*Stb.* 2007, 218.
*Stb.* 2006, 566.
*Stb.* 2006, 53.
*Stb.* 2005, 316.
*Stb.* 2001, 269.

# Websites

Commissie MER
www.commissiemer.nl/advisering/afgerondeadviezen/1307, consulted on June 25, 2013.

Compendium voor de leefomgeving
www.compendiumvoordeleefomgeving.nl/indicatoren/nl0237-Nationale-luchtkwaliteit%3A-overzicht-normen.html?i=14-65, consulted on June 25, 2013.

CONTEXT
http://context.verdus.nl, consulted on May 1, 2013.

De Nieuwe Utrechter
http://dnu.nu/blog/6747-utrecht-vieste-stad-van-nederland, consulted on June 25, 2013.

Gemeente Utrecht
www.utrecht.nl/smartsite.dws?id=324924, consulted on July 29, 2013.
www.utrecht.nl/smartsite.dws?id=244006&klikOuder=267313, consulted on July 22, 2013.

Infomil
www.infomil.nl/onderwerpen/klimaat-lucht/luchtkwaliteit/nsl/monitoring/doet/, consulted on July 29, 2013.
www.infomil.nl/onderwerpen/klimaat-lucht/luchtkwaliteit/nsl/verlenging-nationaal/, consulted on July 29, 2013.
www.infomil.nl/onderwerpen/klimaat-lucht/luchtkwaliteit/vragen-antwoorden/nsl/@112980/flexibele-koppeling/, consulted on June 24, 2013.

NCPAQ monitoring
www.nsl-monitoring.nl/data/public/NSL%202011%20Onderbouwingen%20Projecten.pdf, consulted on July 29, 2013.
www.nsl-monitoring.nl/monitoring-nsl/monitoring-nsl/, consulted on July 29, 2013.

RTV Utrecht
www.rtvutrecht.nl/nieuws/1000821, consulted on July 29, 2013.

Stichting Stop Luchtverontreiniging Utrecht
www.stopluchtverontreiniging.nl/?p=392, date June 1, 2013, consulted on July 29, 2013.

Utrecht Anders
www.utrechtanders.nl/?paged=2, consulted on July 29, 2013.

Volkskrant
www.volkskrant.nl/vk/nl/2664/Nieuws/article/detail/3442910/2013/05/17/Grote-steden-halen-in-2015-EU-norm-voor-stikstof-niet.dhtml, consulted on June 25, 2013.
www.volkskrant.nl/vk/nl/2824/Politiek/article/detail/701919/2004/10/01/Van-Geel-Nederland-gaat-op-slot.dhtml, consulted on June 25, 2013.

# Case law

Administrative Law Division of the Dutch Council of State
ABRvS 12 January 2011, *AB* 2011, 57.
ABRvS 14 April 2010, ECLI:NL:RVS:2010:BM1058.
ABRvS 31 March 2010, *AB* 2011, 56.

Utrecht Court
Rb. Utrecht 14 April 2010, ECLI:NL:RBUTR:2010:BM1072.

# Interviews

Kees van Oosten, *Stichting Stop Luchtverontreiniging Utrecht,* kvanoost@xs4all.nl
Three civil servants of Utrecht city, stationsgebied@utrecht.nl

Urban Regions in the Delta

Meer informatie

**urd.verdus.nl**

Programmasecretaris: Marcus van Leeuwen

m.vanleeuwen@nwo.nl

+31 70 3440931

Senior management assistent: Jessica de Graaff

j.degraaff@nwo.nl

+31 70 3440947

Dit onderzoek is gefinancierd met een subsidie uit het onderzoeksprogramma Urban Regions in the Delta (URD). URD is onderdeel van Verbinden van Duurzame Steden (VerDuS), een initiatief van de Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO), Platform31 en verschillende ministeries.