

Inter-administrative cooperation on EU affairs in The Netherlands: a formal code as basis for a broad structured dialogue and consultation

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RESUMO: O Código de Relações Interadministrativas foi lançado em 2004 para rexeir a estreita cooperación entre as autoridades centrais e subnacionais dos Países Baixos. Esta forma de cooperación multinivel forma parte do chamado modelo 'polder' dos Países Baixos. Desde 2007 tamén se ocupa das relacións interadministrativas holandesas sobre asuntos comunitarios. Este artigo ofrece a perspectiva dun profesional sobre como cooperan as autoridades holandesas centrais, locais e rexionais nos Países Baixos e en Bruxelas nos asuntos da UE.

Palabras Clave: Países Baixo, polderen, Unión Europea, Subsidiariedad

RESUMEN: El Código de Relaciones Interadministrativas se lanzó en 2004 para regir la estrecha cooperación entre las autoridades centrales y subnacionales de los Países Bajos. Esta forma de cooperación multinivel es parte del llamado modelo 'pólder' de los Países Bajos. Desde 2007 también se ocupa de las relaciones interadministrativas holandesas en asuntos de la UE. Este artículo proporciona la perspectiva de un profesional sobre cómo las autoridades centrales, locales y regionales holandesas cooperan en los Países Bajos y en Bruselas en los asuntos de la UE.

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ABSTRACT: The Code of Inter-Administrative Relations was launched in 2004 to govern the close cooperation between central and subnational authorities of the Netherlands. This form of multilevel cooperation is part of the so-called 'polder' model of the Netherlands. Since 2007 it also deals with Dutch inter-administrative relations on EU affairs. This article provides a practitioner's perspective on how central, local and regional Dutch authorities cooperate in the Netherlands and in Brussels on EU affairs.

Keywords: Netherlands, polderen, European Union, Subsidiarity

Introduction

Close cooperation between central government and decentralised authorities in the Netherlands is based on a long Dutch tradition which is called ‘polderen’, a verb based on the noun polder. This close cooperation is formalised in a code for inter-administrative relations, which exists since 2004, but will be renewed by the end of 2021. Since 2007 this code contains also an article on European affairs. The Dutch tradition of ‘polderen’ is, therefore, also incorporated in the Dutch inter-administrative relations on EU affairs.

In 2004 the Code on Inter-administrative Relations was launched in the Netherlands. This code determines how central, regional (provinces) and local (municipalities) government cooperate on the preparation and implementation of new legislation and policies. The code is also the starting point of the financial relations between the different governmental layers. The Code is a kind of formal approach of the typical Dutch way of cooperation: *polderen*. This could be described as a way of close cooperation between all involved parties in which a common approach and position is the ultimate objective. Since 2007 European affairs are part of the Code. This has led to a new way of cooperation of central, regional and local government in The Netherlands on new EU legislation and policies, in which a common Dutch position is the objective, but guarantees also the right to (individual) provinces and municipalities to represent their own interests in Brussels and Strasbourg.

1. The Dutch way: *polderen*

The Netherlands is known for its land reclamation. This new land is called a ‘polder’: land that has been drained and surrounded by dikes to hold back the surrounding water. The word has been transformed in a verb: *polderen*. To ‘win’ this land from the water, people had to cooperate closely and to agree about all different steps necessary to drain the land. Today, in the Netherlands we ‘give back land to the water’ in order to restore nature or to give more space to the water in order to avoid floods in case of high tides, or to have water for consumption and agriculture in case of droughts. The Dutch stopped with *polderen* as it concerns land reclamation, but the verb is still used in another manner.

Today, *polderen* (or the polder model) is used by politicians and media to describe the way government, social partners and special advisors or experts try to find a common agreement by (long) negotiations. Therefore, the ‘polder’ has today two definitions in The Netherlands: the land reclaimed land and the cooperation between government, social partners and experts. This is a defining feature of the Dutch Model (Keman, 2006) The verb *polderen* is becoming more and more as the description how government, social partners and experts negotiate, as land reclamation is becoming something from the past.¹ After all, the classic term in Political Science science of consociational democracy was coined by Lijphart (2004) thinking about his native Netherlands.

In 2019 the Dutch central government reached an agreement with the social partners about a recalibrated pension system after almost a decade of several rounds of negotiations. The goal was to find an agreement which would be acceptable for all involved parties (national government, employers, labor unions and the Social-Economic Council) and which would last for many years. During the years in the national parliament and the press several times the question was raised if the central government should not take a decision without a negotiated agreement with the social partners, but the government did not want to go that far and counted

¹ Or at least in the Netherlands, as some specialized Dutch companies are still reclaiming land all over the world.

on the ‘polder’, government and social partners, to find a final solution. When the agreement was achieved the press mentioned that “the polder was the biggest winner of the pension discussion” (De Volkskrant, 2009).

2. A code for inter-administrative relations

In a way you could say that the inter-administrative relations in the Netherlands are also a product of the polder. The Dutch way of multilevel governance has its origin in the way land was reclaimed. The Netherlands is a decentralized state. Officially, the Netherlands have the system of co-administration. This includes the duty of local and regional government to cooperate in the implementation of higher government regulations. For example, a municipality must help with the implementation of the social security act if a person qualifies for it according to the central government. Nevertheless, it is common sense that the central government should work closely with the other governmental layers in developing policies and in drafting new laws.

According to the constitution of the Netherlands there are three governmental layers: national government, (12) provinces and (352) municipalities. Besides the provinces and municipalities there are waterboards. These are regional authorities responsible for water management. It could be said that the waterboards are the ultimate administrative result of the ‘polder’ (Hendriks & Schaap, 2011)

But this says little about the relations that exist between the different administrative layers and the responsibilities of these layers, which have developed over many centuries into their present form. Central government, provinces, municipalities and water boards have a joint responsibility for good governance of The Netherlands. The decentralised authorities recognize that they have each their own responsibility and that choices they make with regard to policy and implementation consequences

may have for the responsibilities of others governments. Good interplay between central government, provinces, municipalities and waterboards is necessary to achieve common goals, to cope with problems in the Dutch society and realise (common) ambitions. In order to structure this interplay, the central government, the Association of Dutch Provinces (IPO) and the Association of Netherlands Municipalities (VNG) have developed a Code for Inter-administrative relations (after this: the Code). The first Code was presented by the Dutch ministry for the Interior and Kingdom Relations in November 2004 (Dutch Government, 2013a). In fact, the first Code was a response to the fear of provinces and municipalities that the central government wanted to centralise powers. The Code has been changed several times. Today, the version of 2013 is valuable, although central government, IPO and VNG are actually working together on an updated version, which should be presented before the end of 2021.

The Code is based on three premises: a problem-oriented approach, a clear division of responsibilities and tasks, and freedom of policy for decentralized authorities. A problem-oriented approach means that it is social problems that provide the starting point of cooperation. The Code is based on an inter-administrative attitude which binds all the authorities. This attitude is characterised by the understanding that the problem is the central issue, not the authority itself. The problem is then solved by the most appropriate authority. The central government does not interfere, for instance, in matters that pertain to the autonomy of a province or municipality. When there is a question of joint responsibility, interference by the central government will be as limited as possible. This approach could be described as a way of working according to the Principle of Subsidiarity, one of the basis principles of the EU one upon which the Dutch Government has been particularly keen to promote particularly around the last decade (Dutch Government, 2013a; 2013b; 2013c; 2013d; Pazos-Vidal, 2019; Blockmans *et al.* 2014).

The problem-oriented approach takes place against the background of the overall concept of ‘freedom of policy’. This concept clearly underlines the opportunities for the provinces and municipalities to formulate their own policies (such as safety policy and regional economic development) or with very little freedom of policy (such as the Elections Act). In this problem-oriented approach, the emphasis shifts from the process to the result. Directing the process will tie in with this, because the provinces and municipalities can achieve results in their own way. Vertical supervision is limited and policy implementation becomes more important. The goal is to push back the number of rules, as well as detailed joint governance and the number of specific grants. (Ministry for the Interior and Kingdom Relations, 2005: 7; Steunenberg *et al.*, 2015)

The Code includes not only agreements on the distribution of tasks and the way governmental layers cooperate, but also on the financial relations. The starting point for financial relations is that accountability is consistent with the division of responsibilities between the central government, provinces and municipalities: financial arrangements follow the administrative arrangements. It follows that under the authorities, directing performance with financial sanctioning can only take place with specific grants.²

The central issue is social problems; on the basis on this responsibilities are distributed. This ensures that all the authorities can perform better individually; with the result that society as a whole will benefit. This, in brief, is the vision of inter-administrative relations in the Netherlands that forms the foundations of the Code of Inter-administrative relations. Financial relations also fit in this approach: whoever carries out a task, must have the necessary and the necessary budget flexibility. Nevertheless, in March 2021 the VNG had to invoke arbitration by a special committee about a large financial deficit at municipalities in youth care. This special committee decided that the central government should compensate the municipalities, as they were not foreseen with sufficient budget to implement a new legal task. Based on the principles of the Code, the central government accepted the judgement of the special committee and largely compensated for the financial deficit of the municipalities for 2021. For a structural solution for the financial deficit in youth care the new central government has to take a decision.

3. Polderen in a European perspective

Since 2007 the European Union is integrated in the Code. According to article 9 of the Code the basic principle is that agreements with local and regional authorities on national files also apply *mutatis mutandis* to European files. The reason for introducing an article on the EU in the Code was twofold: first, ‘Europe’ became more and more mainstream at local and regional level. Politicians and civil servants of provinces, municipalities and water boards experienced the influence of the EU in their daily practice. This created the awareness that they should be more involved in the preparation, implementation and evaluation of EU legislation and policies. But secondly, the central government wanted to improve its position in the EU decision making process, the Brussels arena, as its influence decreased due to the enlargement of the EU with the Member States in Central and Eastern Europe. The ministries were looking for more strategic and technical input for the negotiations in the Council Working Groups and COREPER³. This input should come from, among others, provinces and municipalities (Dutch Government, 2018).

² *Ibidem*, pag. 9.

³ COREPER: Comité des Représentants Permanents. The committee of ambassadors to the EU of the Member States.

Pivotal question is here: what is the influence of regular European legislation on the position of decentralised authorities? In accordance with the Principle of Subsidiarity, the EU will only act if and in so far as certain objectives cannot be met by the Member States at a central, regional or local level (Art. 5 Treaty on the European Union). According to this principle the administrative level closest to the citizen must be the starting point for the allocation and implementation of tasks, unless it is not effective or practical. Apart from the opinion of the Dutch central government in the preparatory phase as to whether a policy proposal at EU or Member State level should be taken up, the central government will also in this phase expressly take account in the Dutch position the opinions of the provinces and municipalities concerning any (implementation) consequences for their administrative level. For this reason, article 9 of the Code states that the central government will consult the provinces and municipalities at the earliest possible phase of the policy preparations to assess new European policy intentions and legislation that have administrative and financial consequences for the provinces and municipalities. In this respect reducing administrative burdens originating from the EU has been a cornerstone of Dutch national (and local) government EU influencing, particularly around the new EU Better Regulation agenda and which has been closely shaped from the Dutch domestic model, (ACTAL, 2013; Voermans, 2016). Even the “Pact of Amsterdam” (Dutch EU Presidency, 2016) which relaunched a new EU urban agenda, one of the key 2016 Netherlands EU Presidency priorities, is essentially achieving better regulation i.e. reducing EU burden for cities (Dutch Government, 2015; Dutch EU Presidency, 2015a).

The main and formal instrument for the consultation is the Working Group of the Assessment of New Commission Proposals (*Beoordeling Nieuwe Commissievoorstellen* (BNC)). Every new proposal from the European Commission gets within a few weeks after the presentation by the Commission an appreciation by the Working Group on several aspects: policy, finances, subsidiarity, etc. The two associations (IPO for the provinces and VNG for the municipalities) are permanent members of the working group and can present their opinion as far as a Commission proposal influence the position of provinces or municipalities. The final appreciation is approved by the central government and sent to the Dutch National Parliament ultimately within six weeks. An approved appreciation, a BNC Fiche, is the official starting position of the Netherlands for the negotiations in the Council (Dutch Government, 2014).

In order to cover the decision making process in Brussels (and Strasbourg) the ministries can establish special working groups. These special working groups consist of civil servants of every ministry as far as the proposal is relevant for a ministry. IPO and VNG, and in case it concerns water management or some EU funding, the Union of the Water Boards, can join these working groups in case the Commission proposal or policy initiative affects regional or local policies (Simons, 2017). We can distinguish two types of working groups: temporary working groups focusing on one specific Commission proposal, for example a new directive or a set of proposals, and structural working groups which cover all new Commission initiatives in a certain policy field.

The temporary working groups prepare the Council Working Group meetings, follow the decision making process in the European Parliament and, sometimes, prepare already the implementation of the Commission proposal in the Netherlands. In fact, for the European Structural and Investment Funds (ESIF), the special working group usually starts already before the Commission presents its proposals in order to influence these proposals. This special working group presented already a few position papers with a common vision on (the future of) EU cohesion policy. This is a rather particular situation as the official opinion of the Netherlands is that the ESIF should be concentrated in the less developed regions of the EU and not in more developed regions like in The Netherlands. Nevertheless, in view of the fact that the Netherlands

can also receive a *national envelop* from the ESIF, the special working group tries to influence the Commission proposals as far as it concerns the ESIF regulations. The budgetary aspects are the exclusive domain of the Finance ministry (Pazos-Vidal, 2018).

The working groups have different names, depending which ministry establishes the working group. Concerning the temporary working groups we can distinguish: Interbestuurlijke Dossierteam (IBDT, Inter-administrative Dossier Team by the ministry for Infrastructure and Water) or Interbestuurlijke Werkgroep (IBW, Inter-administrative Working Group by the ministry for Economic Affairs & Climate).

The Inter-Administrative Dossier Teams (IBDT) bring together the national government and the national associations of municipalities (VNG) and Provinces (IPO). The Dossier teams assess and formulate national and EU policy in terms of subsidiarity, financial and social impact, administrative burden, and impact on business and the environment (Goedings, 2010). There are about twenty Dossier Teams, thirteen of them EU specific. On EU issues, IPO and VNG participate in the national co-ordinating working group that prepares the first Dutch positions for the COREPER (Ambassadors meeting ahead of Council of Ministers) and the working groups of the Council (weekly meetings), as well as in the national expert group on EU Law (Goedings, 2010) The monthly ministerial-local government meeting (EOBB) was established by the Minister of Public Administration to provide a practical platform to ensure 'Europe and local governments ' early interagency cooperation (Pazos-Vidal, 2019).

The structural workings groups are: Interdepartementaal Staatssteunoverleg (ISO, Inter-ministerial Working Group on State Aid), Breed Handelsberaad (BHB, Broad Trade Council by the ministry for Foreign Affairs), Working Group on Better Regulation by the ministry of Economic Affairs & Climate, and the Taskforce Europese Agenda Stad (Taskforce Urban Agenda for the EU by the ministry for the Interior and Kingdom Relations). For the dossiers on digitalization (e.g. Digital Services Act, Data Governance Act, Artificial Intelligence Act) there is till today not a special of structural working group. These dossiers are discussed in a structural working group on digitalisation which covers all aspects of the digital agenda at EU, national and local level.

Since the municipalities in the Netherlands unite themselves in semi-formal networks (G4 for the biggest for cities in the Netherlands⁴, G40 for the middle-sized cities (> 100.000 inhabitants), M50 for middle-sized municipalities and P10 for rural municipalities), some ministries invite besides the associations representatives of these networks, especially G4 and G40. For the VNG, the association of municipalities, this is a new reality which has led to close(r) cooperation with these networks.

For the general coordination on EU affairs and decentralised authorities, the ministry for the Interior and Kingdom Relations, the 'Mother Ministry' of provinces and municipalities, has established a structural working group in which IPO and VNG participate. This structural dialogue is steered by the annual administrative consultation between the minister of the Interior and Kingdom Relations, the minister for Foreign Affairs and IPO and VNG. Besides this high level dialogue there are regular administrative consultations between the deputy minister of Economic Affairs and Climate on cohesion policy, focusing on the implementation of the ESI Funds in the Netherlands (Adviesraad Internationale Vraagstukken, 2016).

We can conclude that article 9 of the Code on Inter-administrative Relations was the basis for the establishment of a formal dialogue between central government, provinces, municipalities and water boards on EU affairs. This dialogue is concentrated at civil servant level, but has a few

⁴ The four biggest cities in the Netherlands are: Amsterdam, Rotterdam, The Hague and Utrecht.

high level consultations which lead the formal consultation. Therefore, in line with the Code EU dossiers are treated like domestic dossiers.

Article 9 is not only in advantage of the decentralised authorities, which have a shorter way to inside information on the EU decision making process or can influence the national position. The last two decades in the Netherlands are characterised by some major devolutions of power. So was regional economic development decentralised to the provinces in 2008, spatial planning to the provinces also in 2008 and there was a major decentralisation in the social domain (youth care, elderly care, employment, etc.) to municipalities in 2015. The consequences of these devolutions of power is twofold: first, the local and regional authorities are acting in more policy fields with major responsibilities. Due to this, they will be affected by more EU legislation and policies; second, a devolution of powers leads to less knowledge and expertise at central level. In order to have a good position in the Brussels arena (decision making process) and to avoid technical implementation problems or administrative burden, the Dutch central government needs more and more the expertise of decentralised authorities. Central government needs to 'polder' in order to be ready for 'Brussels'. (de Lange et al. 2015).

4. Dutch local and regional government in the Brussels arena

The Code and inter-administrative working groups don't deny the right for the provinces and municipalities to represent their (individual) interests to the EU institutions in Brussels and Strasbourg. Both associations (IPO and VNG) assist the Dutch delegation to the Committee of the Regions (CoR), the official advisory body of local and regional authorities in the EU. Both associations are member of the Council of European Municipalities and Regions (CEMR), the European umbrella of local and regional government. And last but certainly not least, the associations, as well as the municipal networks or individual cities represent their interests in Brussels by collective or individual lobby projects. Indeed, in cases the central government, provinces and municipalities agree to disagree on EU legislation or policies (the Multiannual Financial Framework, the EU multiannual budget is a structural dossier on which the three governmental layers agree to disagree) local and regional authorities are free to 'go their own way' in Brussels and Strasbourg (Groenleer & Hendriks, 2015)

Many provinces and several municipalities are member of a thematic network (e.g. ERRIN, Vanguard, Energy Cities) or European organisation like Eurocities or the Conference of Peripheral Maritime Regions (CPMR). The networks or organisations lobby for certain interests which could be against the formal Dutch position. Of course, this is not always appreciated by the central government, but is at all times respected as the provinces and municipalities are autonomous entities according to the Dutch Constitution and the European Charter of Local Self-Government of 1985 (Schaap & Leenknegt, 2012).

5. Conclusion

Article 9 of the current version of the Code guarantees a (formal) position of local and regional government in the Dutch debate on new EU legislation and policies. But the world is changing and, therefore, also the inter-administrative relations. The ministry for the Interior and Kingdom Relations, IPO and VNG are preparing a new version of the Code on Inter-administrative relations in order to modernise multilevel governance in the Netherlands. Article 9 on EU affairs will not be amended, as it covers still all aspects and procedures which are necessary to keep the (structural) dialogue between central government, provinces and municipalities on EU affairs, on the new legislation and policy initiatives, as well as the

implementation of these Commission proposals. In this way, ‘polderen’ on EU affairs is guaranteed for the coming years and will stay the backbone for the Dutch position in the Brussels arena on many EU dossiers.

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