Tools for making judicial review effective

Dutch experience with NCEA and STAB

Gijs Hoevenaars
Technical expertise

Two Dutch institutions that provide technical expertise

- Before decision-making:
  - Netherlands Commission for Environmental Assessment (NCEA)
- During court case:
  - Foundation of Independent Court Experts in Environmental and Planning Law (STAB)
Netherlands Commission for Environmental Assessment (NCEA)

**Task**

- NCEA advises competent authority on
  - Scoping
  - EIA
  - SEA

- Competent authority is obliged to motivate how advice has been taken into account in decision-making
Some facts

- 30-35 Employees (ca. 15 “advisers”)
- Budget ca. 3.3 million €/year
- Paid per advice by competent authority
- Ca. 160 assessments/year
- Process time ca. 6 weeks
Origin

- Established in 1987
- In 2010: shift from mostly EIA to SEA
- In 2014: shift from funding by three ministries to being paid per advice (profit principle)
Legal requirement EU Law?

EIA (revised directive)
- Art. 5(3)b: The competent authority shall ensure that it has (access to) “sufficient expertise to examine” the EIA
  - Implementation: possibility to ask advice of NCEA. In practice however: costs!

SEA
- Art. 12(2): “Member States shall ensure that environmental reports are of a sufficient quality…”
  - Implementation: Review advice by NCEA obligatory
How does it work?

• Secretariat model
• Working group, consists of:
  • President
  • Technical secretary
  • 2 to 10 experts
• Database of 350 experts
• Site visit
• Review: check on completeness and correctness
Independent

• Experts have no involvement in the project in terms of:
  • employer,
  • colleagues,
  • private connection (e.g. partner),
  • city of residence,
  • additional jobs

• Do not advise developer or affected parties
Transparent

- On the basis of public information
- Website discloses which projects are under review
- Each advice is published on its website
- Press release
NCEA in court cases (1)

Judges tend to follow NCEA advice, because of its:

- authority
- expertise
- consistency
NCEA in court cases (2)

- Quality of the report in general
- Scope and quality of the study of alternatives
- Quality of the description of impacts (maximum impact)
- Scientific knowledge and research methods
- Actuality of the information
- Effectiveness of mitigation measures
Foundation of Independent Court Experts in Environmental and Planning Law (STAB)

Task
Provide the administrative courts with advice on the facts and technical aspects of court cases

Actual: only environmental and planning law court cases
Some facts

- 40-50 Employees (ca. 37 “advisers”)
- Budget ca. 5.5 million €/year
- Financed by the government (Department of Infrastructure and Environment)
- Ca. 200 assessments/year (500 in 2007)
- Process time ca. 3 months
Origin

- Appeal to the Crown until 1985
- Permanent sections on advising in planning law and environmental law cases within the Department of Planning and Environmental Law
Main functions

• Providing impartial technical knowledge

• Structuring facts in complex cases

• “Eyes and Ears of the Judge”

• “Knowledge Broker”
Clients and mandate (1)

(Judicial Division of) **Council of State**, 65%:

- “report on all relevant facts and technical aspects of the case”
- Commissioned in an early phase of the proceedings
- No discussion with parties on mandate
- No comments by parties on the draft report
Clients and mandate (2)

Other (mainly **district courts**), 35%:

- Specified questions on certain technical aspects
- After “pretrial” (early) or after oral hearings (late)
- Parties participate in mandate (partly, district court Den Bosch)
- Parties can comment on **draft** report
Added value

- Impartiality assured
- Impartiality admitted
- Time saving finding an expert
- STAB can bridge technical knowledge and demands of proceedings
- STAB knows legal framework of technical questions
Thanks for your attention!

Questions?