

Administrative orders and execution measures in case of environmental infringements: Netherlands

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Environmental infringements

1. Prevention of pollution

Two (more) general Acts and one (specific) Water Act
(Specific Soil Pollution Act)

2. Land-use (zoning) / building

Two Acts

3. Nature conservation (flora and fauna (species and areas))

One Act (since 1-1-2017)

Focus to 1 and 2: most frequent (general rules v. permits)

3: more criminal law nature (administrative fine (in near future))

Enforcement: Who, when, how, what etc.?

Who does it: competence

When is it done: *ex officio* or on request

Should it be done: discretion or obligation (duty)

How is it done: measures and procedures

Problems and developments.....

Who enforces?

Competence to enforce is linked to the competence to hand out permits or competences based on directly applicable general rules

Recently (quality): (forced) co-operation between municipalities in Regional Implementation Services (co-ordination by provinces)

When?

- After ex officio supervision / inspection
Policy and frequency inspections?

- On request by interested parties
neighbours / ngo's

In case of no (timely) decision: appeal to (mostly)
District Court possible (penalty)

(Higher appeal to Judicial Department Council of
State)

In case of violation of (legislative) norms

There is as a rule: the duty for the competent authority to come with enforcement measures unless there are special circumstances:

- concrete sight on legalization
- very disproportionate in relation with the interests served.

Based on case law of the Judicial Department of the Council of State
(District Courts)

(Some) room of discretion for the administration:
case to case.

Enforcement measures

To restore:

1. Order under penalty (*terme de grace*)
 2. Rectification order (*terme de grace*)
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3. Withdrawal of permit

To punish:

4. Administrative fine (up coming!)

Execution measures

As a rule: duty to enforce implies duty to execute (also based on case law)

Order under penalty: get the penalty

Rectification order: reclaim the costs

In case of no (timely) decision: appeal to court possible (penalty)

Procedures

General Administrative Law Act

Against (primary) decisions to enforce or not to enforce or to execute or not to execute: a complaint is possible to the same organ that took the primary decision:
administrative review

Against the decision on complaint: an appeal to the (district) court is possible: *judicial review*
(grounds of appeal are leading)

Pending the complaint / appeal: provisional relief procedure possible at the relief judge of the (district) court.

Case law on various aspects

Is there a violation and how should that be reported/documented: who is the offender; is there concrete sight on legalization; are there special circumstances; how long can the *terme de grace* be; how high the penalty; which costs can be reclaimed; expiration of the possibility to execute etc.

Problems and developments

Problems:

Frequency of inspections

Long procedures: warning or intention-‘decision’ / primary decision / complaint decision

In case of unlawfull non-enforcement: no retrospective effect

Is financial compensation possible?

Developments:

Growing influence of criminal law (administrative fining is upcoming ; this is punishment and dealt with by administrative courts; more criminal law measures dealt with by criminal courts (double sanctioning?))

Privatisation of supervision/inspection/enforcement

Questions

