

Legal Tools to Stimulate Sustainability

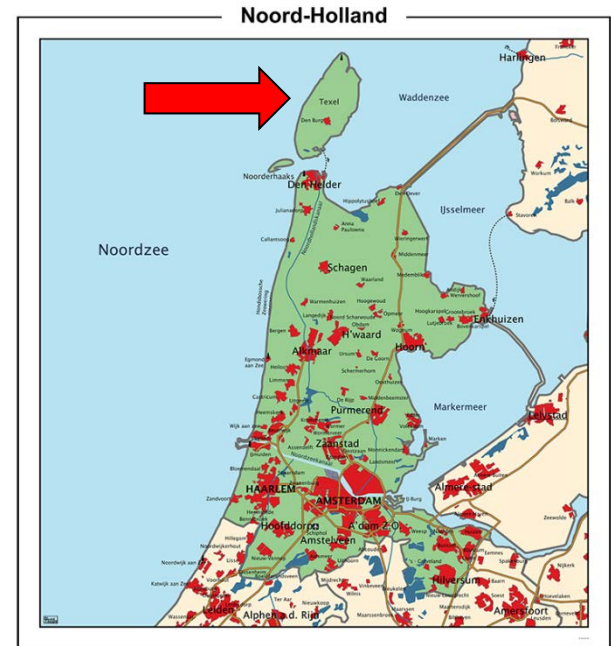
WM0939

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Your assignment



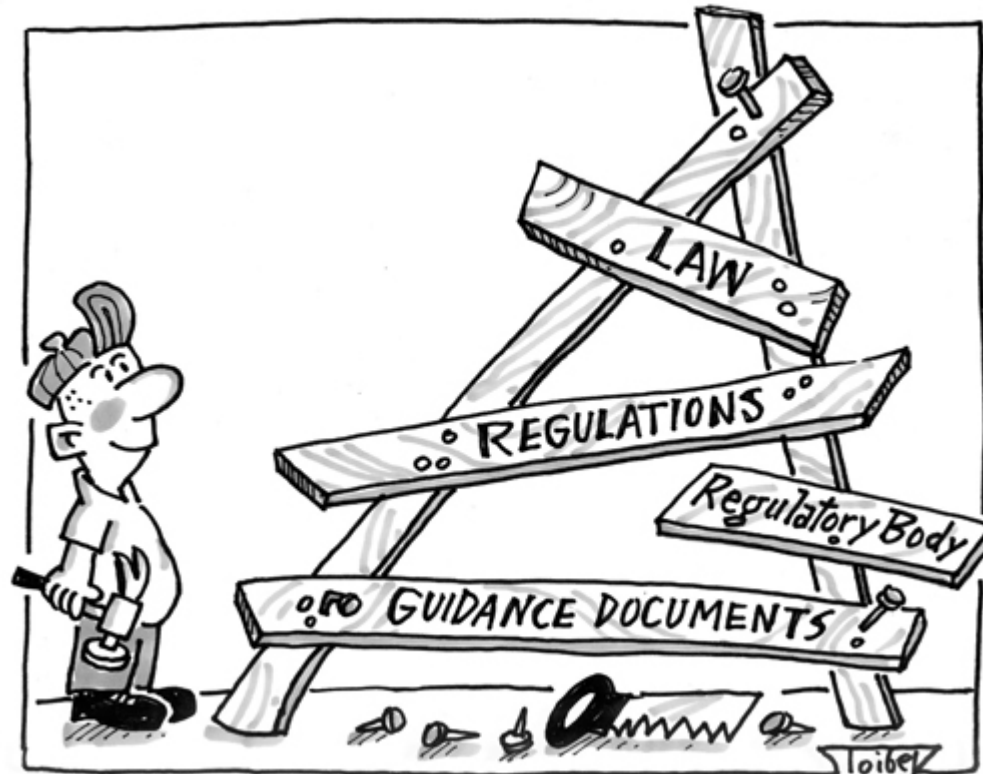
Texel



The government as a leading actor

- What tools does a government have to make the world more sustainable?
 1. Legislative power
 2. Purchasing power
 3. The power to subsidize

1. Legislative power



Levels of legislation

- International (mostly EU)
 - Environmental impact assessment
 - Birds and Habitat
 - Air quality
- Central
 - Implementation of EU legislation
 - Authorizations
- Regional
 - Financial regulations
- Local
 - Land use plans
 - Authorizations

The subsystems in your assignment

1. Food and more
2. From the sea
3. Leisure and knowledge
4. Materials and waste
5. Public space
6. Sustainable mobility
7. Texel as a hoste
8. Water cycle
9. Health and happiness



Texel authorities

- How can the Texel authorities facilitate your sustainable ideas?
 - Amend land use plans, if necessary
 - Be guidant and lenient on authorizations
 - Be informative towards entrepreneurs about the relevant legislation, requirements and conditions
- They cannot order everyone to drive an electric vehicle, install solar panels and eat locally produced sustainable food

2. Purchasing power



Public procurement (a.k.a. tendering)

- A government is a strong market player
- That also means that a government can steer by using its purchasing power
- In order to prevent protectionism and discrimination of companies, a government has to follow certain rules when it buys goods or services → public procurement law:
 - EU Directives
 - Transposed into the Public Procurement Act and the Public Procurement Decree

Main principles

1. Transparency

- The subject of the contract, the procedure, the selection criteria and award criteria have to be known to the market parties beforehand

2. Non-discrimination / equality

- All requirements, specifications and criteria used during the procedure have to be objective and non-discriminating

Sustainable public procurement

1. 'Normal' economic public procurement
2. **Green public procurement**
3. **Social public procurement**

→ Sustainable public procurement

EU policy

- Legal aim to integrate the aim of environmental protection into EU policies, amongst which public procurement
- 2005: *Buying Green!*, Handbook on Green Public Procurement
- 2008: Commission Communication on Public Procurement for a better environment
- 2011: *Buying Social!*, Guide to taking account of social considerations in public procurement

Possibilities in the Directives

1. Technical specifications → requirements for the products, services or works
2. Selection criteria → requirements for the candidate or tenderer
3. Award criteria → requirements for the tender
4. Performance requirements → requirements for the execution of the contract

The *sustainable coffee* case

No coffee, No workee.



Conclusion

- Sustainable public procurement is very much stimulated by the EU
- But a government has to design the tender procedure in a legally sound way
- Which means non-discriminatory and transparent
- Never refer to the sustainable labels but use the conditions underlying the labels
- Presumption of fulfilling those criteria if the market operator has such a label

3. Subsidies etc.

- A very direct way of stimulating sustainable innovations (products and processes) are subsidies (or cheap loans, or free use of facilities, or individual tax exemptions, or)
- But the power to do so can also cause a major distortion of competition
- So again

RULES!

1. You **SHALL!**
2. You **WILL!**
3. You **MUST!**

More specifically

- Rules on the granting of state aid
- Governments are not allowed to grant state aid (which is basically every advantage that is financed with state resources and that is given to a market operator)
- If a government wants to grant state aid anyway, it has to notify the state aid measure to the European Commission unless an exemption applies
- The state aid can only be granted after the European Commission has approved of the measure

And

- If you grant state aid that had to be approved by the EC and you did not get the approval, it is **unlawful** (risk of claims, recovery with interest)
 - If the EC afterwards gives the approval: at least the interest over the period until the approval is due
 - If the EC afterwards does not give the approval: recovery order with interest
- ➔ Neither the government nor the beneficiary of the aid want that, so it has to be carefully checked

But It for a good cause!!!!!!!



Possibilities

- The government contribution is for every one; no limits here → no state aid
- General block exemption regulation (GBER) → no obligation to notify
- R&D&I → the EC will probably approve
- Guidelines on Environmental Protection → the EC will probably approve
- Art. 107 (3) TFEU → the EC will probably approve

GBER (no notification)

- Investment aid to go beyond EU environmental standards (35%)
- Transport vehicles that go beyond EU standards (35%)
- Anticipation on new EU standards; only SME's (10-15%)
- Energy saving measures (60%)
- Investment aid for high-efficiency cogeneration (45%)
- Energy from renewable sources (45%)
- Certain environmental studies (50%)
- Fundamental research (100%)
- Industrial research (50%)
- Experimental development (25%)
- Local infrastructure

Waddenhaven Texel



Verordening van 30 juni 2014 van het algemeen bestuur van de Gemeenschappelijke Regeling Waddenfonds, houdende bepalingen met betrekking tot de verstrekking van subsidies ten laste van het Waddenfonds (Subsidieverordening Waddenfonds 2014)

Het algemeen bestuur van de Gemeenschappelijke Regeling Waddenfonds,

gelet op artikel 5 van de gemeenschappelijke regeling Waddenfonds,

besluit de Subsidieverordening Waddenfonds 2014 vast te stellen als volgt:

Hoofdstuk 1 Algemene bepalingen

Artikel 1.1 Begripsbepalingen

In deze verordening wordt verstaan onder:

- a. algemeen bestuur: het algemeen bestuur van de gemeenschappelijke regeling Waddenfonds;
- b. Algemene groepsvrijstellingsverordening: Verordening (EU) Nr. 651/2014 van de Commissie van 17 juni 2014, waarbij bepaalde categorieën steun op grond van de artikelen 107 en 108 van het Verdrag met de interne markt verenigbaar worden verklaard;
- c. activiteitenplan: een beschrijving van de activiteiten waarvoor subsidie wordt aangevraagd en de daarmee nagestreefde doelstellingen;
- d. activiteitenverslag: een beschrijving van de uitgevoerde activiteiten waarvoor subsidie is verleend, waarbij een vergelijking wordt gemaakt tussen de nagestreefde en de gerealiseerde doelstellingen en een toelichting wordt gegeven op de verschillen;
- e. Awb: Algemene wet bestuursrecht;
- f. boekjaarsubsidie: subsidie aan een privaatrechtelijke rechtspersoon met volledige rechtsbevoegdheid die, met toepassing van artikel 4:23, derde lid, onderdeel c, van de Awb, per kalenderjaar wordt verstrekt, waarbij de hoogte van het subsidiebedrag gerelateerd is aan een bepaald niveau van activiteiten;
- g. dagelijks bestuur: het dagelijks bestuur van de gemeenschappelijke regeling Waddenfonds;
- h. de-minimisregelgeving: regelgeving omtrent staatssteun uit de Verordeningen van de Europese Unie 717/2014 (voor de visserijsector), 1408/2013 (voor de landbouwsector) en 1407/2013 (voor de overige sectoren);

Projects that have been subsidized on the basis of this Regulation

- Cultivation of potatoes on salty soil
- Project Aqua TX: drinking tap water from glass bottles
- Cultivation of organically produced cranberries
- Redesign of the water system in the polder De Bemes
- TexelEnergie: solar park (0.8 Mw)
- Urganda Foundation: e-car pool
- Sustainable street lights
- Waddenhaven Texel: sustainable playground, beach and art
- Ecomare: education and information

Conclusion

- In your search to make the world more sustainable, you will be confronted with legal rules
- They can work against you but also for you
- Make sure that you have the knowledge to use them in the most optimal way

