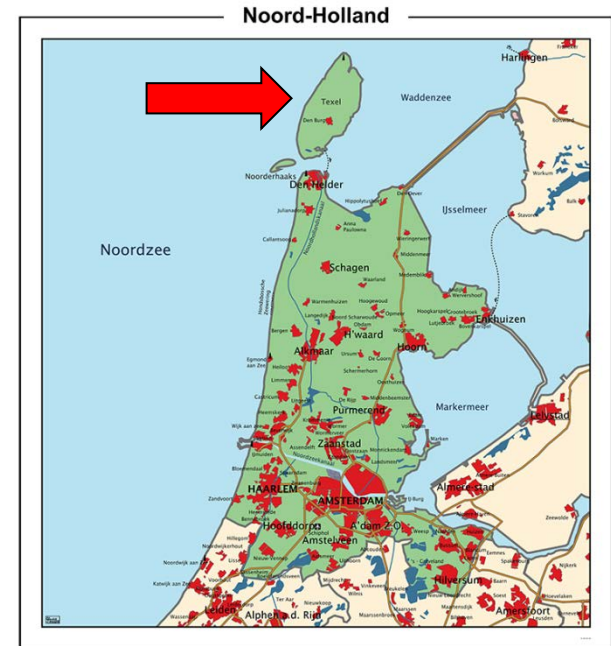


A sustainable Texel

A legal perspective

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3 December 2015

Your assignment: A Sustainable Texel

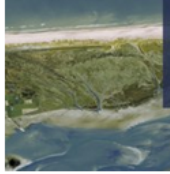


Accommodate community



Textel's tourism is all about beds and accommodation. An often-heard doubt about sustainable tourism...

Close the water chain



People use clean water and produce wastewater, that needs purification before it returns in the...

Feed Texel



Currently inhabitants and tourists consume food from the main land and abroad; and the world is fed...

Go emission-free



Sustainable transport of freight will be essential for a sustainable island; it will be emission

How to get there



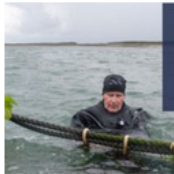
Both inhabitants and tourist experience a need for individual mobility. The current transport and...

Live with salination



Farmers, nature conservation and water managers currently perceive salination as a major threat...

Live with the sea



The seas surrounding Texel seem promising for new technologies see weed farming. Seaweed is super...

Organic matter matters



People and nature not only consume organic matter, they produce it as well as food left-overs

Permanently innovate



Sustainability initiatives, knowledge institutes and museums on the island constantly reflect and...

Regenerate inorganic waste



People use a lot of materials, and they throw away a lot as well. Currently the waste of Texelars...

Sustainable entrepreneurship



Texel has many entrepreneurs, with local retailers, craftsmen, consultants, building contractors

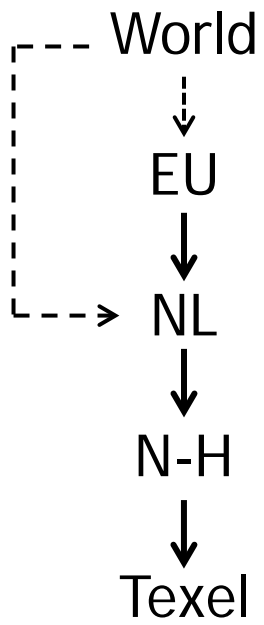
Sustain lifestyles



Lifestyles define people like us in the way we live our lives, what we do, with whom, where, how...

Institutions: Rules and regulations

- They exist, so you have to deal with them
- They can form barriers
- But you can also use them to reach your goal
- Your design has to fit into the legal framework, otherwise it will probably not be realized and your work will be useless
- So be aware of the constraints and opportunities!



Types of law (1)

- EU law:
 - EU (constitutional) Treaties
 - Regulations (have direct effect in the national legal order)
 - Directives (have to be transposed in national law)
 - Decisions
 - Soft law (guidelines, frameworks, notices, ...)

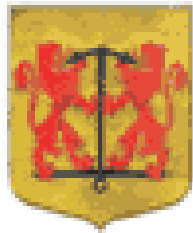
Types of law (2)

- National law:
 - Acts (wetten)
 - Royal Decrees (Koninklijke Besluiten)
 - Administrative Decrees (Algemene maatregelen van bestuur)
 - Ministerial regulations (Ministeriële regelingen)
- Provincial law:
 - Provincial regulations
- Local law:
 - Local regulations

Types of law (3)

- Governments can also:
 - Adopt individual decisions, e.g. to grant a subsidy
 - Issue authorizations
 - Close contracts
- And governments have to take certain principles of law into account, e.g. non-discrimination, fair play, transparency

Your client



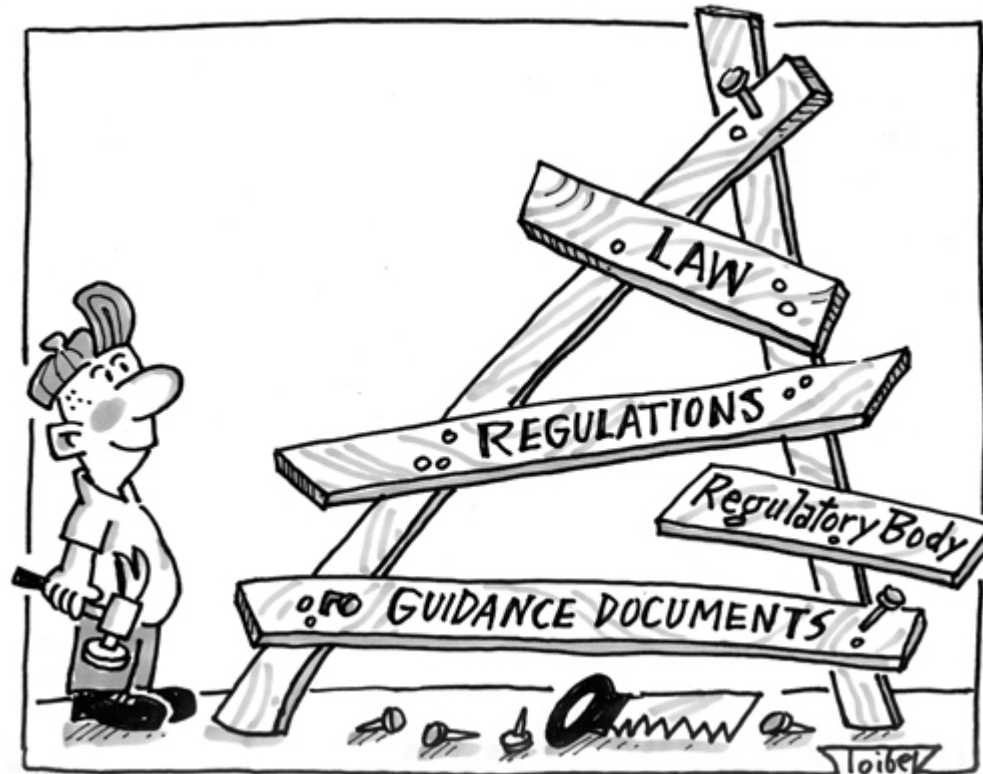
Gemeente Texel

Helemaal weg en toch zo dichtbij!

The government as a leading actor

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

1. Legislative power



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
- They can also not prohibit non-domestic products

Judgment “Buy Irish”



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
 - A government cannot invite only local entrepreneurs to tender

Sustainable public procurement

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

→ Sustainable 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

But...!!!!The *sustainable coffee case*

No coffee, No workee.



Conclusion

- A government can (should!) procure sustainably
- 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

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

