

# **An Instrumental Approach to Planning and Development Law in the Netherlands**

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# Preface

The coming into effect of the Environment and Planning Act (*Omgevingswet*) in 2023 marks an important moment in the evolution of Dutch planning law. All previously existing acts pertaining to the built environment now are brought together in one – all-encompassing – law. The changes which are introduced by the new law are so fundamental, that new textbooks are needed. This is such a textbook.

In 2016 we wrote *Planning and Development Law in the Netherlands; An introduction* (IBR, The Hague). That book was written under the regime of previous acts relating to the built environment. The book at hand, *An instrumental approach to Planning and Development in the Netherlands*, can be seen as the successor of that book. Quite some parts of the 2016 book have been updated and re-used for the 2022 book. Also, many new parts are written. Furthermore, the structure of the book is changed considerably. We moved away from the typical structure of law books and chose a different framework. Now, the focus is on four different types of instruments and how the use of combinations of these types shapes the built environment. The differences between the 2016 book and this book are so sizable, that we chose a new title.

Some words are needed to explain the title of this book: *An instrumental approach to planning and development law in the Netherlands*. The first word to explain is ‘instrumental’. An instrumental approach focuses on the use of law as an instrument of politics to reach certain goals. Such an instrumental approach differs from, for example, a protective approach to law. A protective approach to law focuses on the law as a safeguard against governmental (and others’) decisions. There are two reasons to choose an instrumental approach in this book. First, (spatial) planning is a highly instrumental activity. Many definitions of spatial planning include the notion of the public sector using methods to influence the distribution of activities in spaces of various scales. In other words: the use of instruments to reach certain goals. Therefore, it is logical that a textbook on planning law also chooses an instrumental approach. Second, the primary target audience for this book are students in the Built Environment disciplines. Given their profile and future jobs, most of them will primarily be interested in an instrumental approach to law. The focus on the instrumental function of law does not mean that the protective function of law will not be covered. There are enough places where legal protection against governmental planning decisions is dealt with. The main focal point, however, is the deployment of instruments to reach policy goals.

The second word in the title that needs explanation is ‘development’. This book gives, compared to typical planning law texts, more attention to the legal aspects of the ‘development side’ of planning. It is not confined to a description of the formal system of planning. It also looks at the implementation of planning decisions. This is the development side and includes, among other things, the interrelations between local authorities and property developers. Now that developers (and not government) are responsible for the realisation of ‘private’ functions such as dwellings, adequate attention to ‘development’ alongside ‘planning’ is justified. The concentration on

development has also led to the specific instrumental view which is chosen as the conceptual framework for this book. This is a view that focuses on the effects of the use of instruments by the government on private sector (i.e., developer) behaviour.

The target audience for this book is (Dutch and international) students. We believe that students in the Built Environment disciplines can benefit from a concise overview of instruments of Dutch planning law. The disciplines we suggest are: Management in the Built Environment, Regional and Urban Design, Real Estate, Planning, Construction Management, Planning Law, Urban Development, Property Development or Policy Sciences.

We trust that the chosen structure of the book – four types of instruments – is alluring to international students. They probably are not that much interested in the details of Dutch planning law. However, we feel that the arrangement of instruments in four categories is useful for every country, irrespective of the legal particularities of the instruments. To heighten the interest of international students, we selectively employ international comparisons, that is: how does the Dutch regulatory regime compare to those in some other countries?

Also, international researchers who are interested in Dutch planning law belong to the target audience. Often, the Netherlands can be seen as a frontrunner in innovations in planning law. One example is the introduction of the single-permit system for building projects in 2010. Another example is the ambition to bundle all built environment laws in one act, of which the Environment and Planning Act is the result. These are impressive ventures of regulation and attract attention from across the borders. This textbook helps international researchers to understand the recent Dutch legislative projects.

The emphasis in *An instrumental approach to planning and development law in the Netherlands* is on local building projects and urban (re)development projects. This means that less attention is given to the provincial and national scales. This is simply because the majority of projects have a local scope.

This book is not exhaustive in the treatment of Dutch planning law. Not all of the existing legal instruments are discussed. The selective approach has to do with the relevance of instruments in practice for the target audience. The instruments which are commonly used will be discussed. Others are left out.

All chapters are written by Fred Hobma, with the exception of chapter 10, that was written by Pieter Jong. We are grateful to Tessa van Tienhoven for the improvements in our use of the English language.

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