



International E-mail Conference on Irrigation Management Transfer

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WUA Legislation Country Profiles: The Netherlands

Constitutional framework

Water management is the responsibility of the central government, the Provinces, the Water Boards and municipalities.

1. Name of organization

Water Boards (*Waterschappen*)

2. Purpose

Water management

3. Legal status and capacity

Water Boards are public bodies. They enjoy full legal personality and have the power to enter into contracts, acquire property and institute legal proceedings.

4. Establishment

Procedure: The permanent executive body of the Province, which is the Provincial Executive, prepares a proposal to establish a new Water Board, after having consulted the existing Water Boards concerned. The proposal is made public and, in addition, sent to the municipalities within the area concerned. During a period of four weeks, anyone with an interest or concern in the new Water Board can make comments, after which the Provincial Executive can decide to amend the proposal. Subsequently, the Provincial Executive sends the (amended) proposal, including all the comments made on it, to the principal governing body of the Province, which is the Provincial Council. The Council decides on the establishment of the Water Board, which decision must be approved by the Minister of Transport, Public Works and Water Management.

The Province also adopts (or amends) the by-laws (*reglement*) of the Water Board, which provide a further regulation of powers, duties and its organization together with the composition of its administrative bodies. The establishment procedure described above is also applicable to the adoption (or amendment) of these by-laws. However, ministerial approval is required only for specific decisions, for example concerning the modification of the Water Board's tasks or the geographic area concerned. In case of a modification of the Water Board's tasks, anyone with an interest or concern in the Water Board may appeal for a reconsideration of the Minister's decision to the Judicial Division of the Council of State (*Afdeling Rechtspraak van de Raad van State*).

5. Membership

The Water Boards operate according to the principle of "pay, say and interest". Only those persons with an interest in local water management ("stakeholders") pay for the activities of, and are represented in, the Water Board. The greater one's interest in the Water Board's activities, the more one pays.

5.1 Eligibility criteria

The law lists the following categories of stakeholders:

- the owners and tenants of land
- the owners of buildings
- the users of buildings for commercial purposes and
- the inhabitants of the area concerned

5.2 Rights and duties of members

The categories of stakeholders listed above pay for the activities of the Water Board. Each Water Board organizes its own elections, during which each category of stakeholders elects its representatives to the Council of the Water Board.

6. Internal structure

The Water Board is governed by the Council (*Algemeen Bestuur*), the Executive (*Dagelijks Bestuur*) and the Chairman (*Voorzitter*).

The Council consists of representatives elected by the stakeholders to a four-year term of office. Membership of the Council is not a full-time commitment. The law contains strict rules on conflicts of interest. The representatives receive a financial compensation for their activities. The meetings of the Council are generally open to the public. Further rules on the elections, the functioning of the Council as well as the rights and obligations of the representatives are spelled out in separate governmental regulations (*Algemene Maatregelen van Bestuur*) and the by-laws (*reglement*) of the Water Board

The Council is the Water Board's highest body, which delegates tasks and responsibilities to the Executive. However, the Council remains responsible for general policy decisions and decisions on financial matters, such as the approval of the annual budget and the levy of assessments.

The Executive consists of members chosen from and appointed by the Council to a four year-term of office. They receive a salary from the Water Board. The membership of the Executive is a full-time commitment. Each member concentrates on a portfolio of responsibilities. The law determines that the meetings of the Executive are generally closed to the public. Again, further rules on the functioning of the Executive and the rights and obligations of its members are spelled out in separate governmental regulations (*Algemene Maatregelen van Bestuur*) and the by-laws (*reglement*) of the Water Board.

The Executive is responsible for the administration and management of the Water Board. It prepares the meetings of the Council and implements the Council's decisions.

The Chairman of the Water Board is appointed by the Minister of Transport, Public Works and Water Management to a six year-term of office, following a recommendation of the Council. The Minister also decides on his suspension or dismissal. The Chairman must have the Dutch nationality. Again, detailed rules on his tasks, rights and obligations are spelled out in separate governmental regulations (*Algemene Maatregelen van Bestuur*) and the by-laws (*reglement*) of the Water Board.

The Chairman represents the Water Board and chairs the meetings of the Council and the Executive. He is a member of the Executive, while he has an advising role during the meetings of the Council.

In addition, smaller sections, which concentrate on specific tasks of the Water Board, may complement the internal structure. Detailed rules on the functioning of these sections are spelled out in the by-laws (*reglement*) of the Water Board.

The Water Board has a secretary, appointed (as well as suspended and dismissed) by the Council. The secretary assists the Council, the Executive and the Chairman in performing their tasks.

7. Functions, Powers and Rights

7.1 Functions

The Water Boards have three main responsibilities:

- water quantity, which includes the management of water levels
- water quality, which includes the prevention of water pollution, and
- water control, which includes the protection against flooding by means of dunes, dykes, canals, dams and locks

In addition, the Water Boards may have the responsibility for the maintenance of rural roads and inland waterways.

7.2 Powers

Levy and collection of assessments: The law contains detailed procedures on the levying of assessments. The Water Board appoints special officers to collect them.

Imposition of fines: See below

Others: The Water Board is entitled to formulate and adopt binding rules in a specific regulation (*keur*). This regulation (*keur*) includes rights of way, maintenance and operation issues, the issuance of wastewater permits and licenses, inspection, damages, and the imposition of fines and other measures. The Water Board appoints inspection and control officers who have the power to draw up an official report (*proces-verbaal*) on the infringement or violation of the regulation (*keur*). In addition, they may be competent to control compliance with central governmental and provincial regulations. Within four weeks after drawing up their official report (*proces-verbaal*), the officers can decide to settle the case with the violator(s) concerned. If they do not settle the case, it is up to the judicial authorities to initiate legal proceedings. In addition, the Water Board may use administrative force (*bestuursdwang*), whereby after proper notice the Executive (or in situations of emergency, the Chairman) can perform the necessary actions to halt infringements or violations and recoup the costs afterwards.

7.3 Rights

Water rights: No specific provision

Rights in the infrastructure: After establishing (or modifying the tasks of) the Water Board, the Province takes a decision on the works and buildings, the management of which will be transferred from the Province or municipalities to the Water Board. Subsequently, within two years from the date of management transfer, the works and buildings will be transferred in ownership. The Water Board and the Province or municipalities concerned will agree upon a financial settlement concerning the transfer of ownership within six months from the date of actual management transfer. If no agreement can be reached within that period, the Provincial Executive or, if the works and buildings are owned by the Province, the Minister of Transport, Public Works and Water Management, will decide.

Rights of way: See above 7.2

8. Financing

The Water Board is financially independent from the Provinces and the central government and raises its own revenues to finance the costs of local and regional water management.

An exception to this rule is made for management tasks that serve national or provincial interests, such as the maintenance of rural roads and inland waterways. The central government or the Provinces provide the necessary funds to carry out these tasks.

9. Government role

At the central government level, the Ministry of Transport, Public Works and Water Management formulates and adopts the overall strategic water management policy, which also takes into account other important sectors such as land-use planning and environmental management. The Ministry supervises the Provinces, the Water Boards and the municipalities. In specific cases determined by the law, the Minister serves as the authority of appeal for reconsideration of provincial decisions. In other specific cases determined by the law, the Judicial Division of the Council of State (*Afdeling Rechtspraak van de Raad van State*) serves as the authority of appeal for reconsideration of ministerial or - directly - provincial decisions.

The Province formulates and adopts the provincial strategic water management policy, which takes into account the overall water management policy of the Ministry. In addition, the Provinces are responsible for operational groundwater management. They supervise the Water Boards and the municipalities and approve the land-use plans adopted by the municipalities. In specific cases determined by the law, the Provincial Executive serves as the authority of appeal for reconsideration of decisions of the Water Board. For example, anyone having an interest or concern can appeal to the Provincial Executive from a decision to adopt (or modify) a regulation (*keur*).

The municipalities are responsible for managing the sewerage system. Besides, they adopt land-use plans.

10. Dissolution

Following a proposal of the Provincial Executive, the Provincial Council decides on the dissolution of a Water Board. The Minister of Transport, Public Works and Water Management must approve the decision. Anyone with an interest or concern in the Water Board to be dissolved may appeal from the decision of the Minister to the Judicial Division of the Council of State (*Afdeling Rechtspraak van de Raad van State*).

11. Federation of Associations

Name: Union of Water Boards (*Unie van Waterschappen*)

Website (in Dutch): <http://www.uvw.nl> (with links to all Dutch Water Boards)

The information in this section has been obtained from the website.

Purpose: Advising the Water Boards, promoting cooperation between them, and representing them towards the central and provincial government and other organisations. Reportedly, the Union has played an important role in the process of formulating the Water Board Act 1992.

Membership: All Water Boards are a member of the Union, which has the status of association.

Internal structure: The Union has a General Assembly, in which all the Water Boards have one vote. The Union has a Council, which consists of seven members. Each member concentrates on a portfolio of responsibilities. The Director of the Union is also the secretary of the Council. Several commissions concentrate on various policy issues. These commissions are advised by working groups that consist of water experts.

References

Legislation: The Constitution and the Water Boards Act 1992

The Water Boards Act 1992 is available on the FAOLEX database <http://faolex.fao.org/faolex>