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Urban Regions in the Delta



The Innovative Potential of Contextualising Legal Norms in Processes of Urban Governance: The Case of Sustainable Area Development

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Nederlandse Organisatie voor Wetenschappelijk Onderzoek

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**The Innovative Potential of Contextualising Legal Norms
in Processes of Urban Governance:
The Case of Sustainable Area Development**

Willem Salet
Jochem de Vries

CONTEXT

CONTEXT is the acronym for 'The Innovative Potential of Contextualising Legal Norms in Governance Processes: The Case of Sustainable Area Development'. The research is funded by the Netherlands Organisation for Scientific Research (NWO), grant number 438-11-006.

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The innovative potential of contextualising legal norms in processes of urban governance: the case of sustainable area development

The proposal epitomises the tension between policy and law, and investigates this dynamic relationship with regards to issues of sustainable area development in the transformative setting of urban peripheries. Cities face the challenge to integrate area development (housing, economy, infrastructure) in urban regions with the conditions of sustainability (environment, water). With regards to the tension between policy and law the proposal first notices the clash of two steering philosophies in practices of area development: on the one hand the model of 'interactive governance', which turns away from formal pathways and aims at adaptive practices of co-production by stakeholders, thus making a positive use of specific regional circumstances, and, on the other hand, the existence of hierarchical policy regimes and legal rules at national and European level. By combining the different pragmatist and institutional motives, the researchers attempt an innovative approach, which is labelled as the 'contextualisation of legal and social rules'. This model pays tribute to the value of general principal norms and legal rules in order to protect standards of environmental quality. However, the way in which the norms should be respected leaves room for different solutions and contextualisation under different regional circumstances. The research is planned in three international regions, respectively Randstad North, Metropolitan Paris and Greater Manchester.

European cities face the challenge of urban reconfiguration at a larger scale and scope. While economically strong urban regions are likely to continue their growth and external interrelationships in next decades, within many of these regions urban activities are being increasingly decentralised, thus transforming the city-centred configurations of the previous century into new settings of urban polycentricism (Hall & Pain, 2006). Characteristically, the fragmentary 'rest' areas (that used to be labelled as urban periphery) have become a very dynamic zone of contemporary urban transformation. The challenge of sustainable area development of cities nowadays has to be fulfilled for a large part in these institutionally and socially fragmented peripheral spaces. The regions that are selected for the research programme share these conditions. The empirical research will investigate the challenges of sustainable area development in the following three regions: Randstad North (Amsterdam Metropolitan Area and Utrecht City Region), Paris Île-de-France (France) and Greater Manchester (UK).

Randstad North has a housing problem that is unmatched in the Netherlands. While in future decades many Dutch regions will be confronted with a stable or even declining population, Randstad North is expected to witness sustained economic and population growth which lead to a transformation of areas within and outside the main cities. At the same time policy aspires to safeguard principal environmental and water qualities and to avoid the encroachment of valuable landscapes. As a result many prospective locations for transformation are confronted with restrictions. At the same time, the region faces enormous environmental and water-related challenges, including increasing rainfall and rising sea level caused by climate change.

Similar problems of coordinating area development are observed in the periphery of Paris. Here the junctions of the new metropolitan light-rail network create strategic potential for residential and commercial development but meet problems of integrating sustainable qualities in highly fragmentary spaces. In Greater Manchester, the airport area generates a similar context of tensions between development, transformation and sustainability in the urban periphery.

In all three cases, sustainable development in *post-suburban areas* (Phelps & Wood, 2011) meets complex challenges of governance as national and European legal and policy conditions of decision-making processes are confronted with specific local conditions. Point of departure in this research proposal is that effective and legitimate area development has to balance and integrate demands of general legislation and policy with demands of governance that aims to involve a wide array of locally specific interests. Therefore the central question of the research is:

How can central regulation be matched with interactive local policies in such a way that it enables legitimate and effective strategies of collective action with regards to sustainable development in areas of urban transformation?

The search to recombine the different steering philosophies of formal legislation and governance in sustainable area development

An ever more pressing problem in achieving collective action in relation to urban transformation, concerns a clash of steering philosophies. On the one hand, the border crossing ambitions of area development (crossing different sectors, integrating the different governmental tiers and the private sector) require that various public and private parties freely negotiate, exchange and coop-

erate to find innovative and context specific solutions for collective action. This (often) informal approach is embodied by the discourse on 'governance'. On the other hand, legalistically inspired debate reinforces centralist policy and legal regimes, such as the national and European environmental and water policy: specific conditions are set, which often leave little flexibility for local interpretation. This centralised steering philosophy is in practice not limited to standards to protect certain principal qualities, but also contains many instrumentalist clues about how the standards should be met, which are often perceived as hard and inflexible.

Shortcomings, especially when rules are too detailed and instrumentalist have been pointed out in several recent research reports (Sorel et al., 2011; Zonneveld et al., 2011):

- Rules can become too restrictive and therefore severely limiting the possibilities for balancing the interests in a concrete instance;
- The existence of a wide variety of specific rules gives many opportunities for frustrating the solving of collective action problems as it provides opponents with the possibilities to use adversarial tactics, such as going to court;
- A myriad of legal rules severely limits the search for creative and innovative solutions;
- Rule-based policies have a tendency to lead to compartmentalisation.

All over Europe, national and European legal and policy regimes are subject of debate due to problems of overregulation, resulting in national programs of deregulation for almost two decades. However, simultaneously new legislation is established because of on-going specialisation of society and its accompanying risks. Furthermore, tendencies of liberalisation and privatisation require the involvement of diverse stakeholders. Finally, cross-scalar reconfiguration of urban activities implies that in concrete localities problems of collective action are connected to a variety of geographical scales. All tendencies have led to more uncertainty and confrontations between multifarious interests. These new conditions can only be met through solutions that fit local circumstances. The latter though is at odds with centralist regimes and the on-going trend of overregulation.

Responding to these problems, alternative approaches have become more dominant in public administration and policy sciences, considering legal formalism and hierarchical policy-making as negative points of reference. The corresponding steering philosophy is frequently labelled as (interactive, adaptive, self- or network) governance. The term governance is widely used in social science but has very different meanings. Here, governance is associated with the emergence of new arrangements for collective action that differ significantly from post-war welfare state arrangements: economic actors and civil society gained much more importance vis-à-vis state actors. Furthermore, governance is characterised by less regulation and more cooperation. In the field of planning, for example, the 'old' state of affairs was characterised by regulatory planning, focused on land use, state-centred and hierarchical decision-making. Gradually, practice has moved to types of planning characterised by negotiations, consensus building, visioning, public-private partnerships and horizontal decision-making: stakeholders meet to find pragmatic solutions to complex problems of collective action (Klijn & Koppenjan, 2000).

Literature suggests that governance is better at dealing with uncertainty, integrating multiform interests and providing tailored solutions than traditional ways of dealing with collective action problems. Ostrom (1990) demonstrates that for common pool resources – such as water, envi-

ronmental and spatial quality – self-governance is a ‘third way’ providing more optimal results than hierarchical intervention or the market mechanism. Contributions from ecological literature underpin the crucial meaning of adaptability and resilience versus hierarchy and formalism of systems (Folke et al., 2005; Gunderson et al., 2009). Also interactive governance offers possibilities for increasing public support and legitimising collective action (Edelenbos, 2005). Governance explicitly accepts uncertainty as a characteristic of policy making. Furthermore, governance creates conditions for ‘problem solving’ (Scharpf, 1997), which is the integration of different interests providing new value instead of simply coordinating and compromising between different interests. The creativity needed for solutions that rise over the individual interests of stakeholders is also served by governance arrangements. Finally, governance contributes to integrating local contextualised knowledge – as opposed to generalised expert knowledge – in decision-making procedures (Fischer, 2000).

Nevertheless, the rise of governance has also brought shortcomings to the fore. Long-term interests are not evidently secured in interactive strategies. Furthermore, interactive strategies are likely to reproduce inequalities of power, which definitively is a risk for area development in peripheral urban spaces where central city, national government and autonomous market forces inject the interactive processes with their own resources. There is the danger that consensus among participating stakeholders becomes the ultimate criterion for success, even if the result can be qualified as ‘negotiated non-sense’ (De Bruijn & Ten Heuvelhof, 2004) and often can hardly be labelled as innovative (Grin et al., 2010). The involvement of a multitude of actors also carries the risk of avoiding responsibilities for difficult problems in order to avoid the blame for failure. Furthermore, governance can lead to problems with principles of democratic accountability under the rule of law. Legal norms provide clarity and, in doing so, reduce uncertainty for citizens and stakeholders.

Legal contextualisation

Legally inspired steering philosophies are often strong in areas where governance is weak and vice versa and therefore ways in which both approaches would reinforce each other is highly desirable. Nevertheless the clash of the two steering philosophies has yielded no adequate synthesis. Contemporary studies in public administration have a tendency to consider informal policy-making and horizontal policy networks as an alternative to the problems of ‘policy hierarchy and legal formalism’, while the innovative potential of legal thought receives little attention in this discipline. On the other hand, law studies do not pay much tribute to the potential of contextualisation of generic norms. In the most extreme case, governance ignores general norms and does legalism end in instrumentalism where policy is formulated through detailed rules that apply in all possible situations.

This research project opts for a different approach. The innovative starting point for this research is that governance needs to start to acknowledge the value of generic standards, while at the same time it needs to be assured that legalism does not lapse into mere instrumentalism. The innovative potential is in the ‘legal legitimacy and a sense of commitment among those to whom law is addressed’ (Brunnée & Toope, 2010). We will explore the potential of general rules to guide area development while simultaneously enabling local actors to make optimal use of context specific considerations, resources and knowledge. This is what the proposal understands ‘the contextualisation of legal norms’ to be.

Understanding the potential of contextualisation of legal norms requires equal appreciation of on the one hand the quality of legislation and central policy-making and on the other hand the local aspirations of decision-making. Starting point of the research project in relation to the quality of legislation and central policies is that regulation should be of a *generic* and *durable nature* (Fuller, 1964). Generic means that legislation should avoid detailed specification, but it should still be principal. Durable means that it should be avoided that the legislator has to produce new rules for every specific problem. At first glance, this may seem almost self-evident, but in practice these basic notions are often neglected. Politicians, policy-makers and legislators do not evidently concentrate on the 'principal', the 'general' and the 'durable' quality of legislation. Social problems almost *never emerge as 'general', 'principal' or 'durable' phenomena*, they become manifest in specific spatial-temporal contexts of the *here and now*. This is why in legislation one does not often find general rules with principal material norms (such as 'healthy food', 'clean and safe water', 'clean air') but instead numerous specifications of input and output conditions. In other words, to deal with specific problems at the level of the 'general, the principal and the durable' the legislator has to generalise the specific to another level of abstraction (van Rijswijk & Salet, 2010). Properties of 'good' regulation therefore generalise from particular situations, without losing their principal quality. This is a complicated requirement, in practice it is not always optimally done. Next, the real meaning of general principal rules has to be contextualised in new specific practices. So, there is a double transformation: in establishing new rules from the specific to the general and in applying rules from the general to new specific contexts (van Rijswijk & Salet, 2010).

With regard to the local context of decision-making it is required that local practices of decision-making – in their inventive processes of interaction and negotiation – pay tribute to the meaning of central principles. A complex question in this perspective is how general rules can elaborate generalised meaning in such a way that it still makes sense and gives normative hold in new specific situations. It requires a great deal of creativity to establish general legal rules under such seemingly paradoxical requirements. In the evolution of legislation and policy-making many inventive ways have been developed to bridge the specific and the generic (see the new uses of the liability principle, which is very general and simultaneously normative in new specific situations) (Faure & Peeters 2010).

The potential of legal contextualisation becomes manifest in two ways. First, by the activation of generic norms in specific contexts when legal subjects actively interpret the meaning of these norms in very specific contexts and hold each another to this meaning. Secondly, contextualisation occurs by activating the self-regulating potential of local governmental agencies and civic subjects: the time and space specific initiatives and interactions of all those to whom it concerns. This corresponds to what Hajer (2011) calls the 'energetic society'. Stakeholders are guided in a general and principal way by legal rules and they are activated via these rulings to find their own context-bound solutions reflecting the normative meaning of the legal rules. In some parts of European legislation procedures of experimental governance are established to compare the policy solutions in different contexts (via benchmarking) and to adopt good practices. The research attempts to empirically investigate what practices are established in the case of sustainable area development in transforming urban regions and which possible improvements may be suggested.

Research plan (approach and methods)

The general premise of the research proposal is that governance practices of sustainable area development in transforming urban regions will prove to be more legitimate and effective when (European and national) legislation and policy principles, are generic and durable in nature, allowing stakeholders to produce context specific and innovative policy solutions, while at the same time including the principal purposes of legislation and policies.

We explore the premise from three respective disciplines 'law', 'urban and regional planning' and 'political science', thus conceptually triangulating the meaning of legal contextualisation. The programme raises a variety of questions in the three domains:

- First, attention has to be geared towards the *characteristics of (legal and policy) rules*. Questions arise such as:
What rules and principles are at stake?
How do they impact on practices? In which respects do they actively guide the local search for solutions of sustainable area development and in which respects do they frustrate this search?
Do the rules focus on generic and principal qualities, which are to be respected or are detailed specifications and input criteria involved? Do rules enable or constrain inventive local practices?
- Second, a focus should be applied to planning: the *organisation of area development processes* provoking questions such as:
How is the area development process organised in order to coordinate the different claims of cross sector sustainable area development?
Which stakeholders are involved and how does this relate to the different interests that are involved and therefore the contextualisation of legal rules?
Does the process architecture supports or limits a creative search for contextualisation of legal rules?
- The third domain providing potential explanations for successful contextualisation of legal norms, concern *the political and institutional conditions* in which area development takes place:
How do political and institutional conditions define the multi-actor setting of sustainable area development?
How does this actor-setting influence the treatment of legal and policy rules and hence impacts on the contextualisation of legal and policy rules?

This means that – apart from the questions related to 4-D Geographical Information and Decision Support Systems (GIDS) – we will address all core questions of the programme 'Urban Regions in the Delta'. As the above and the case descriptions make clear, we will put a strong emphasis on the second part of the second question: which requirements have to be met for couplings between various spatial systems, synergy between functions and the integration of sector demands and solutions? Above all, we will particularly emphasise the fourth core question: which policy models can successfully address fragmentation and complexity in the decision-making system? Our project will explore and test the potential of an alternative approach between legally and governance inspired steering philosophies to achieve area development 2.0.

The project will investigate comparable cases of sustainable area development in three regions (Randstad North, Paris-Île de France, and Greater Manchester) the actual role of central rules and principles in the practices of regional and local area development.

The following cases have been selected:

- *Westflank Haarlemmermeer* is an area development project in the Metropolitan Region Amsterdam that aims at creating an attractive living and working area (10,000 dwellings) in a green/blue environment and at the same time making the Haarlemmermeer Polder climate-proof and tackle existing water problems. With the decision of Central Government for a 380kV power line through the Westflank Haarlemmermeer the project came to a halt, with the problems – regional housing shortage and water management – remaining. There is a variety of (spatially defined) legal norms that limit the flexibility to address the problems, amongst them safety norms related to Schiphol airport.
- The extensive *Markermeer-IJmeer* area – the water between Amsterdam and Almere – is characterised by a complex and interrelated problem with a large number of actors involved, and an even larger range of potential stakeholders. A main problem is the poor and still declining ecological quality of the area while Markermeer-IJmeer is a designated Natura 2000 area (Birds and Habitats Directives). Apart from the politically and socially controversial nature of certain elements (such as building outside the dikes in Almere and new infrastructure links) this development is hampered by problems in terms of (inflexible) legal regimes resulting from EU directives and the way these directives have been implemented.
- *Utrecht's Central Station* area lies at the heart of the city of Utrecht and contains the station, shopping mall Hoog Catharijne, and the trade fair Jaarbeurs. The area is currently being re-structured to accommodate the growing number of travellers. The municipality is leading the project, but its success is dependent on the cooperation of the private partners, and both the national government and the province take a keen interest. The project's progress has been slowed down by restrictive rules regarding soil protection, air quality and spatial planning on several occasions.
- *Rijnsburg* is a peatland polder of 850ha close to the motorway junction A12/A2 near Utrecht. The municipality of Utrecht plans to develop 7,000 dwellings. Because the area is extremely vulnerable in the light of climate change (weak soil conditions, high water table) Utrecht opted for sustainable area development. Approval of the area development project is postponed because of a negative exploitation model. There is a clash between the legal time frame of land exploitation (10 years) and the time horizon of investment returns (20 years). With the negative financial prospects ambitions are cut down in favour of short-term solutions, which has negative consequences for water management of the wider area.
- The *Northern IJ Banks* in Amsterdam is a brownfield area development project that aims to transform this former industrial and harbour zone into a mixed-use urban quarter. This poses severe challenges for land-use planning to combine the existing functions, industrial development and housing (7,000 dwellings). Various spatially defined norms prohibit development or if development is allowed conditionally, create legal uncertainty for the sitting companies or new residents.
- *Plaine Commune* is an inter-municipal association uniting 8 municipalities of suburban Paris around a common development project. It is a brownfield area, mostly inhabited by low-income population groups, which is subject to strategic area development. Recently the French government has introduced Territorial Development Contract to plan and manage urban devel-

opment, which consists of legal agreements signed between the State and municipalities or inter-municipal associations. The Plaine Commune project will allow to analyse the emergence of a new governance system within the contractual framework including the relations between local and regional governments, the relations between public and the private sector, the role of the state (national and local state) and the participation of civil society.

- The *Manchester Airport City Enterprise Zone* is a good example of the maturity of interactive (horizontal) governance arrangements at the multi-authority Greater Manchester scale and of vertical policy alignment between national and local levels of government with respect to the new national spatial development policy instrument. Enterprise Zones bring tax reductions and eased planning regulations. As a result it might create tensions due to uneven economic and social benefits and potential for conflicts with national and European regulations with respect to carbon emissions and environmental damage.

The research will be conducted through a multiple case study design. Within each project the research design will be based on in-depth case studies. By developing a case study protocol (Yin, 2003) it will be secured that data collection is done in a similar way, despite the involvement of different researchers and research groups. The programme management will secure that the protocol is implemented. Each research group will be made primary responsible for the collection of basic data in a particular case. Data collection methods will consist of archival research – consisting of both of internal as well as public policy documents – which is secured through participation of end-users. In addition, some non-participating stakeholders have assured that they will contribute to project by providing access to information. Furthermore, semi-structured interviews will be conducted (transcribed and member checked). Considering that all cases are on going at this stage, this offers the opportunity for participative observation. Post-doc researchers will regularly discuss field notes with their supervisors and the other post-doc researchers. Next publications will be shared with one of the other disciplines. For data analysis the project will also take full advantage of the composition of the consortium. First, the researchers will present their raw data analysis in regular meetings with all researchers. Second, consortium members will be asked to comment on preliminary insights and draft-papers. Third, consortium-wide meetings will be primarily used to draw cross-case and cross-subproject conclusions.

Per case study at least two end-users are approached (see members of the consortium). The end-users play an important role in formulating and defining the case problem statement. They deliver an extended case description, facilitate and participate in interviews through researchers and provide access to archives. Articles for professional journals will be prepared in collaboration with professional partners. There will be one meeting every half year, in which the researchers present findings of their research to get feedback from the end-users. Three meetings will be organised in cooperation with the international partners, one in the Netherlands (kick-off meeting), one in Paris, and one in Manchester. The end-users shall try to integrate the research findings into their professional practice. We will provide guidelines for adaptive environmental law, which offers the chance to link up with the scheduled amendment of Dutch environmental law. Furthermore, models – including aspects of process architecture – for contextualising generic rules will be produced, illustrated by best practices from the different cases.

Description of the subprojects

Subproject 1: Assessing the opportunities for contextualising of legal norms (Marleen van Rijswijk, Utrecht University)

A key plank of the overall research design is gaining thorough knowledge of the *characteristics of (legal and policy) rules* that impact on area developments. This subproject deals with the formal regulation. The aim is to assess the characteristics of the national and European legislation and policies in the cases involved and to explore its potential for spatial and temporal contextualisation in local practices of policy-making. As European regulation is implemented in national regulation, this transition is also object of study.

The research question guiding this project is:

What are the characteristics of the (legal and policy) rules that guide the area developments and how do they impact on the process and results of these area development projects?

For assessing the characteristics of the selected legislation and policy rules the following (tentative) indicators will be used:

- the level of abstractness or generality and principality of regulation;
- the generic versus the specific nature of regulation;
- the open versus bounded nature of regulation and the room for policy discretion;
- the durability of regulation;
- the focus on input, throughput or aimed outcomes;
- the internal and external enforcement of regulation.

With regard to establishing the impact of rules questions arise such as: do rules provoke adversarial (legal) action or do they contribute to collaborative action; to what extent do different rules pose contradicting demands to area development; how are rules interpreted by participants in area development processes?

As central regulation has to guide many different – at forehand unknown – local processes of social interaction, generality is a necessary condition for good regulation. For this reason in the tradition of state and law it is widely established that good legislation combines principality, generality and durability of regulation. However, the problems and political aspirations behind legislation usually are not principal, durable or generic but – in contrary – very specific. The challenge of legislation is every time again to find ways of generalisation that enables necessary policy discretion and is also able to give direction in specific social interaction to ensure that prescribed and desired protected levels are guaranteed. This is a complex and creative challenge, which in different regulation is dealt with in different ways. We want to assess how it is done in different prac-

tices of legislation and policy-making, what are the clues of generalisation for example by using open and qualitative formulated norms and principles, such as expressed in the selected regulation.

In line with this analysis, the next challenge is to explore the potential to deal with this regulation in different contexts of sustainable area development. Which openings are to find in law and policies to deal with its normative substance in different context specific ways? The research will see on the relations between goals, policies, regulation (including binding quality and safety standards), effectuation and enforcement as well as on the role of the several governments involved and the several societal stakeholders involved.

The research will employ methods of traditional legal research (the (desk) study of legislation, jurisprudence and literature), qualitative empirical research and comparative research. The application of (participative) observation will be considered if good occasions arise.

The project will go through the following stages:

- 1 Determining the most relevant rules per case through content analysis and interview with one key informant per case.
- 2 Assessing the characteristics of selected rules through applying pre-determined indicators. In this stage the existing laws and jurisprudence will be studied. Furthermore, the intentions of the legislator will be reconstructed.
- 3 Evaluating the impact of selected rules on area development, by reconstructing the decision-making process in a number (three or four out of the six) cases and evaluating the interpretations of participants.

We expect to find barriers and new opportunities for the interaction between legal generalization and contextual specification, which may be used to improve practice and set a agenda for further research.

The multidisciplinary research method involves the cooperation with the other involved disciplines, in particular with regards to urban and regional planning and political governance. Finally, the research will employ a new research method in order to examine the topics of complexity and change, namely collaborative action research, since the research will be elaborated in close cooperation and interaction with the societal stakeholders who also participate in the project.

Subproject 2: Developing strategies for contextualising of legal norms (Wil Zonneveld, Delft University of Technology)

The working package is key to the full research program as it investigates the methods of innovative policy making with regards to the border crossing problems of collective action in specific local contexts. This subprojects deals with the local process architecture of sustainable area development. The aim is to investigate in all selected regional cases policy innovations in practices of border crossing policy making via interactive processes and to investigate the interrelationships with central regulation.

The research question guiding this project is:

How are the different interests and claims of stakeholders with regards to sustainable area development in particular regional contexts blended into collective action, how do this context-specific governance relate to the norms and guidelines of central regulation and can this be considered effective and legitimate?

Border crossing practices of governance are needed to tackle the comprehensive challenges of sustainable area development in fragmentary regional contexts. The crossing of borders implies the blending of policies of different sectors (combining the policy perspectives of respectively development and sustainability), the crossing of borders of different governmental agencies, and often also the crossing of the borders of public sector and private sector agencies in horizontal forms of governance. Characteristically, process architecture includes different practices of network management based on forms of cooperation and trust rather than hierarchy and formal competences. Characteristic, too, are the reciprocal relationships: via direct interrelationships between the involved stakeholders integrative policies on sustainable area development are conducted. These may include negotiation, exchange of interest, and forms of cooperation. Effectiveness of local process architecture is based on the combination of competences and resources of completely different stakeholders. Legitimacy is attempted via consensual and interactive approaches of policy-making. In this working package it will be assessed first what type of interactive practices of policy making actually are effectuated in the selected cases and what innovative solutions of integration are brought forward via the crossing border mechanisms of policy interaction.

Next, the crucial question is to investigate how these inventive contextual solutions relate to with central regulation. What incentives and what constraints does central regulation provide to deal with the central guidelines or norms in context specific ways? How do national agencies and actors act in multi-level policy making in the selected areas? This question is central to the research because we expect that integrative and contextual policy-making is constrained by too detailed central sector regulation and administrative behaviour which do not correspond to the conditions of each particular context of the cases. We expect this because of the very complex challenge to define at central level generic rules that simultaneously must give sense of direction in numerous different and unknown local circumstances. So, the intriguing challenge of this subproject is to assess how inventive local practices of interactive policy-making cope with the central sector regulation. We expect – taking on board our experience in other research projects – that we will come across sensitive issues, both with respect to the barriers and opportunities of regulation and with respect to administrative cultures and the behaviour of people representing governmental bodies and stakeholders. We will deploy research techniques to bring such issues to the foreground, as this is an important element of contextualisation. Our stakeholders are committed to participate in such an approach.

Methods of research include the following steps:

- 1 Extensive interviewing of all stakeholders via semi-structured interview protocols making use of software to analyse interview reports such as Weft QDA.
- 2 Analysis of internal and public documents and sources applying similar software as mentioned above.

- 3 Assessing and evaluating (triangulation) the results of the previous steps via workshops for each individual case study area, making use of the results of Work Package 1
- 4 An international workshop embracing all six case study areas and the key persons for all participating stakeholders.

Subproject 3: Understanding conditions for the contextualisation of legal and policy norms

Willem Salet & Jochem de Vries (University of Amsterdam)

The third work package deals with the *political and institutional conditions* of the multi-actor context of governance. An assumption underlying the overall project is that successful contextualisation of legal and policy rules, is not only dependent on the precise formulation of these rules and the project architecture chosen but is also influenced by structural conditions. The incentive structure, identity and agency of actors is structured by institutional conditions (Scharpf, 1997; Dembski & Salet, 2010). Furthermore, the (asymmetry of the) actor constellations – the particular configuration of stakeholders in a particular area development process – to a large degree determines whether actors will be oriented towards strategic interaction or will be inclined to seek a more collaborative approach. Therefore the ability and preparedness to creatively translate given legal and policy rules to local conditions might significantly differ among different situations. The international comparison over three countries is expected to yield important results.

The research question guiding this project is:

How do political and institutional conditions impede on the processes of collective action in regional practices of sustainable area development and how do they interfere in the contextualisation of legal and policy rules?

Political and institutional conditions cover a variety of contextual variables relevant to collective action. First of all, the actor constellation is very much influenced by the distribution of powers and responsibilities within government. The issues at stake are not just local issues because of the transforming character of cities. In all three regions – as in many more in Europe – there is substantive responsibility for area development at local level. Higher tiers of government often have a stake in strategic policies in the urban periphery (infrastructure, housing, commercial projects, etc.) and also put regulatory conditions with regards to the sustainability of area development. Second, the involvement of the public sector is very differentiated and characterised by selective interests in peripheral development. Also the position of the private sector is crucial in this governance panorama, in many cases the market takes the lead in the development of best accessible parts of urban periphery. Questions that arise in relation to the private sector are for example do private actors consider the contextualisation of rules an exclusive responsibility for public actors or do they actively contribute to the creative process of contextualisation? And, how is their behaviour in this respect related to characteristics of their organisation (local embedding, expertise etc.). Third, big differences exist with respect the degree of organisation of the civic domain at the level of metropolis. The extent to which civic actors – (ad hoc) pressure groups of local citizens, environmental groups etc. – are inclined to seek a collaborative or adversarial approach – often resorting in litigation – is assumed crucial for the success of contextualisation of legal rules. In addition to the actor configuration the recent local and regional evolution of spatial conflicts and developments can be considered an important condition for governance of area development.

We expect to find answers, first, on how the asymmetric actor configuration conditions governance, and second more specifically how these structural conditions impede on the barriers and opportunities for effective and legitimate legal contextualisation.

The different stages of this project are:

- 1 Establishing the structural conditions of the actor configuration (analysis of stakeholder positions (both formal analysis of competences and resources, and the perceived power interrelationships of the actors involved. Analysis of formal positions analysis and frame analysis of perceived interrelationships (content analysis, interviewing key informants).
- 2 Reconstructing the impact of above mentioned structural conditions on the practices of interactive governance in the three regions: determining the specific barriers and opportunities to collective action (interviewing representatives of key actors, supplemented by a quick scan of contributions to the media of these key actors).
- 3 Establishing the relationship between political and institutional conditions and instances of (failed) legal contextualisation. Uncovering how different stakeholders used their structural position in process of legal contextualization (reconstructing and analysing specific episodes in the area development process).
- 4 Assessing the impact of structural conditions on the effectiveness and legitimacy of legal contextualization. Systematic comparison of the different (international) cases with regards to impediments and opportunities to improve (important role for the consortium meetings).

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Urban Regions in the Delta

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