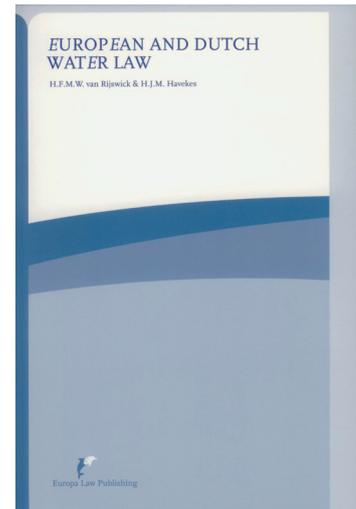


# BOOK REVIEW

# EUROPEAN AND DUTCH WATER LAW

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■ The Dutch water management system is regarded with increasing interest by other countries, especially developing countries. The interest not only concerns the more technical oriented question how the Dutch keep their vulnerable, low-lying and densely populated delta habitable with their famous innovative water works. It extends as far as the governance dimension. The institutional and legal framework are essential for successful implementation of water management and for a good understanding of how Dutch water management works in practice.

The book “European and Dutch Water Law” is an important contribution to facilitate this growing interest of other countries. This book (published in May 2012) is the English version of the book “Waterrecht in Nederland” (2010) from the same authors. Both authors have an excellent and longtime knowledge of and experience with the governance dimension of Dutch water management. The result of the co-production is a voluminous book of 450 pages (and 519 including the appendices) that presents an integral and comprehensive analysis of Dutch water law in conjunction with the water law of the European Union. The reason for this broad scope is that Dutch water law is heavily influenced by EU water law. This is expressed in the title of the book and is also guiding for the content of the book. It is consequently done in all chapters of the book by first discussing the relevant EU legislation and then discussing the implementation of the EU legislation in the Dutch water legislation and practice. This approach labels the book as something special. That applies also for the chosen thematic approach. Rather than presenting a series of isolated descriptions of the numerous EU directives and the main Dutch statutes, the authors have chosen for a thematic approach, explaining and analyzing the

relevant provisions of European and Dutch water law in each context. So, enough reason for paying attention to the book in this journal.

## Contents of the book

First a remark in advance. The object of the book ‘water law’ has a broad scope. It consists of the management and administration of water systems and water services. The first element concerns the protection of water systems and sustainable use of water as a natural resource. The second element consists of the supply of drinking water and the collection, transport, and treatment of waste water. The terms ‘water law’ and ‘water management’ (which are used as synonyms in the book) cover all these dimensions.

The structure of the book is in essence the following. The first chapters (1-3) deal with some general starting points in the water law. They are the foundation for the treatment of the different organizational and substantial themes in the following chapters (4-17). Starting point is the idea of water management as a public responsibility. The constitutional basis for this can be found in article 21 of the Dutch Constitution,

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which stipulates that it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment. The elaboration in more detail has taken place in different statutes, especially in the Water Act of 2009.

Another point is the right to water and sanitation. This right, recognized as a human right, is formulated in different international agreements and is an important element of the Millennium Development Goals. The authors discuss this subject comprehensively (in 56 pages) by paying attention to this right in the Universal Declaration of Human Rights, the EU legislation and the Dutch water legislation. I can appreciate the comprehensive attention, because the implementation of the right in national legislation is complex and difficult in developing countries with a lot of poor people who do not have adequate access to water and sanitation. It is also my own experience with the technical assistance of the preparation of the implementing government regulation on water use right in Indonesia. One of the constraining elements is that this legislation establishes legal duties for the government, which is a shift in the traditional legislation approach.

A third general issue concerns principles in water law. It is a short chapter, but nevertheless important. Both international law and European law contain principles of water law such as the precautionary principle, the principle of preventive action, the polluter pays principle, etc. They may guide the actions of public authorities and individuals. The authors comment that (contrary to the Dutch environmental legislation) it was deliberately decided not to include explicit water law principles in the Water Act of 2009. A reason for not doing so is the fear that legal principles will influence decision making and individuals can rely on the principles before the courts. It is noted that numerous new water acts of developing countries mention such principles in various articles. However, the effect in practice is minimal. The authorities do not yet take these principles serious in the strategic and operational decisions and individuals have a weak position in court cases. There is still a long way to go.

After discussing the mentioned general issues, the chapters 4 and 5 outline the evolution of European and Dutch water law and legislation. Both are evaluated from a sectoral to a more integrated approach. The Dutch Water Act of 2009 is an important milestone in this process. Eight existing Acts about different water management aspects have now been integrated into one Act. I can endorse the decision to include the whole text of the act as appendix in the book. The Act is in my opinion a good example of a high qualified legal product and can guide the architecture of new water acts in other (developing) countries. For achieving the objectives of water management a good administrative organization is crucial. Chapter 7 discusses this subject in detail (67 pages). The way water management is organized in the Netherlands,

is quite different from other countries. The main responsibility for water management lies with regional water authorities (waterschappen), in combination with the State (responsible for water systems of national interest), while supplementary responsibilities lie with municipalities, provinces and drinking water companies. Water authorities are functional public authorities which are generally responsible for water management in the Netherlands. The focus on functional decentralization of the water management is a result of a long history, which is explained in a transparent way in the book. This governance-model with its own administrative and financing system enjoys much interest of other countries. However, it is noted that prudence is required with promoting this model abroad. It is wise to take the governance-model of another country as starting point and look to possibilities for better cooperation (organizational, procedural and with respect to content) between the involved public authorities of the different government levels. Cooperation between water authorities and other involved authorities/organizations is always necessary in water management, also in the Netherlands. Chapter 9 deals with it. One specific example of cooperation is noted here. We have to cope with enormous technical and financial challenges to solve the climate change problems. The new Administrative Agreement on Water of 2011 (Bestuursakkoord Water) is a good example of cooperation between central government with the umbrella organizations of the provinces, municipalities, regional water authorities and drinking water companies. This agreement includes a large number of arrangements which are intended above all to lead to more efficient water management, so as to save costs. Various countries have already showed their interest in this agreement and are impressed of such a far reaching way of cooperation.

The following chapters (10-15) discuss in-dept the different parts of the water management: protection against floods and water nuisance, protection of water quality, fresh water supply, protection of the marine environment, sewerage systems and wastewater treatment, and supply of drinking water. Characteristic for all these subjects of water law is the integrated planning approach, necessary for taking into account the mutual relation between all involved interests. This explains the earlier treatment of plans and programs in chapter 8.

The book contains also specific chapters on liability (16) and financing (17).

The book ends with some concluding observations about the most important guiding issues of the book. The overall observation is that the current water law is a fairly good system in which management and administration are regulated in such a way that water management can be exercised efficiently and effectively. Nevertheless, many legal issues require further study in the future. So, the authors can continue their impressive scientific work. ■