The Dutch Climate Change Act from a legal perspective

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I Why a dedicated Dutch Climate Act?

> **Urgenda Decision**... orders (2x) the Netherlands to limit the joint volume of Dutch annual greenhouse gas emissions so that this volume will have reduced by at least 25% at the end of 2020 compared to the level of the year 1990

> **Paris Agreement**... requires each Party to prepare, communicate and maintain successive nationally determined contributions (NDCs) that it intends to achieve

> **European Union**... sets binding annual ghg reduction goals for non-ETS (Effort Sharing Regulation; NL 36% compared to 2005) and will demand integrated National Energy and Climate Plans (NECP) on efficiency / renewables / emissions (Governance Regulation)

> **Coalition Agreement**... stated in October 2017 that the main issues concerning climate and energy will be laid down in a Climate Act
Other relevant developments...

No more gas extraction by 2030...

No more coal fired power plants by 2030...

Draft Climate Agreement on 11 July 2018...

And introducing... Dutch CO2 price floor
I Climate (change) Act?

➤ Flagship piece of climate legislation:
  • comprehensive, overarching and unifying legislative act relating to climate change mitigation/adaptation

➤ Minimalistic/symbolic form: act of parliament with either a target for the reduction of or a national ceiling for CO2 emissions

➤ ‘Overarching legislative act that focuses on achieving a set target for greenhouse gas emissions reduction or implementing a ceiling for emissions, at a certain time, while introducing governance to ensure durable, legitimate and effective climate change policies which cover key functions like setting and adapting goals, coordinating implementation and providing finance and provisions on monitoring, reporting and verification’
II History: added value to existing body of law?

> Next to EU ETS, renewables & energy efficiency...
  > No legal basis for a binding National CO2-emissions ceiling (or emissions reduction target) in existing environmental legislation
  > No binding obligation for government to adopt a climate change mitigation policy (to achieve ceiling or target) + No specific/dedicated governance
  > → NEC Directive implemented by agreements between Government and industry

> Environment and Planning Act → in force in 2021 (?)
  > ‘Environmental value’ (quality standard) could be a reduction target or a ceiling
  > Legal consequences according to EPA?
    − 1. Obligation to implement a programme (policy) with measures to achieve the goal (climate plan/carbon budgets?)
    − 2. Monitoring required + obligation to adapt programme when necessary
II History: the road towards a Dutch Climate Act

2008 (draft climate act by NGO’S)
- CO2 emissions shall be reduced by 90% in 2050
- Interim targets of 30% in 2020, 50% in 2030 en 70% in 2040
- Direct relation between targets and assessment framework for granting permits

2016 (legislative proposal by opposition)
- CO2 emissions shall be reduced by 95% in 2050
- CO2 emissions shall be reduced by 55% in 2030
- Share of renewable energy shall be 100% in 2050 (e.g. CCS not allowed)

2018 (amended legislative proposal by broad coalition)
- Framework for developing policy to achieve CO2 reduction target of 95% in 2050
- Strive for a CO2 emissions reduction of 49% in 2030
- Strive for a CO2-neutral electricity production in 2050 (e.g. CCS allowed)
27 June 2018

‘The most ambitious Climate Act in the World’

> Main target binding? Only between Government and Parliament
  > ‘Hard binding target provides clear signal to industry’ vs. ‘not legally enforceable’

> Intermediate targets? ‘Strive for’
  > From 55% to 49% + allows Government (more) flexibility
    > achieving target later means more CO2-emissions before 2050
III  Targets and instruments 1

1) Climate Plan

- Every 5 years policy(measures) for the next 10 years aimed at achieving the target → report on progress every 2 years
  - a) Forecast for % renewable energy + progress in energy efficiency
  - b) Consequences for industry, households and society
  - c) Participation: anyone can have their say about draft climate plan

- Not mandatory: carbon budgets + info on distribution over sectors

- Closely related to EU NECP (less concrete!) + Climate Agreement
Meer dan 100 partijen verlagen de CO₂-uitstoot van Nederland met 49% ten opzichte van 1990 via het

Klimaatakkoord

Klimaatbureau

Elektriciteit

20,2 Mt
minder CO₂-uitstoot

Mobiliteit

7,3 Mt
minder CO₂-uitstoot

Landbouw en landgebruik

3,5 Mt
minder CO₂-uitstoot

Industrie

14,3 Mt
minder CO₂-uitstoot

Samenleving

Gebouwde omgeving

3,4 Mt
minder CO₂-uitstoot

De samenleving moet mee. Meer dan 100
bedrijven en organisaties proberen mee, aan bel of
op een andere manier. Mensen kunnen ook
bijdragen zoals het land bijkomen en zelf
ideeën voorstellen via da.a.
III Instruments 2

2) Climate memorandum

- Climate day on the 4th Thursday in October →
- Report (annually) by the Minister (Department for Economic Affairs and Climate)
  - Will allow Parliament to hold Government accountable
  - Info on what departments have contributed + consequences of the policy for budgets of departments + industry and households if deviant from Climate Plan
  - Includes the progress reports on Climate Plan (every 2 years)

- No Carbon Budgets per department + No real annual report
III Monitoring & Expert Advice

> 3) Climate and Energy Report (annual scientific report)
  - Dutch Environmental Assessment Agency reports on the effects of Climate Plan in the previous year
  - Climate report merged with (changed?) energy report
    - Forecast allowed? No, but probably necessary. But no official task giving advice

> 4) Expert Advice from Council of State (advisory division)
  - Consulted on Climate Plan, Climate Memorandum and before progress report (every 2 years)
  - No Expert Climate Committee! Connecting to existing institutional structures
    - Conflict with legislative advice of the Council of State itself
  - Council of State is experienced in advice on legislation, public governance and (financial) budgetting, but has no experience giving advice on climate issues (or specific policy areas)
IV Conclusions: appreciation

- Target in act of Parliament: clear signal but instruments for accountability and safeguards against backsliding are disappointing
  - No binding intermediate targets; intermediate target weak(ened)
  - Missed opportunity to introduce mandatory carbon budgets
- Climate Plan: smart instrument but content possibly fragile
  - Smart: can serve as Nationally Determined Contributions (Paris) and as Integrated National Energy and Climate Plan (EU)
  - Possibly fragile: success relies on content of ‘voluntary’ Climate Agreement
  - No legal instruments to force Government to achieve target or change plan
- Monitoring and expert advice: should be broader and more dedicated
  - Small(er) role for scientific reporting (no forecasting?)
  - No dedicated, experts advice by Climate Committee. Role Council of State?

- Dutch Climate Act sets ambitious target but is rather minimalistic
- Will hopefully improve political debate and perhaps create momentum
Thank you for your attention