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The Netherlands
Environment

Contributor

Loyens & Loeff

Guido Koop

Partner | guido.koop@loyensloeff.com

Jan de Heer

Senior Associate | jan.de.heer@loyensloeff.com

Nanne Kusters

Associate | nanne.kusters@loyensloeff.com

This country-specific Q&A provides an overview of environment laws and regulations applicable in The Netherlands.

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The Netherlands: Environment

1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

The Netherlands has a comprehensive and well-established regulatory framework governing environmental protection. As of 1 January 2024, the (new) Environment and Planning Act – EPA) contains most of the Dutch environmental regulatory framework, although some specific parts of the (old) Environmental Management Act (Wet milieubeheer – EMA) remain in effect.

The EPA contains generally applicable regulations and minimum standards for a large variety of environmental concerns, such as air pollution, noise hindrance, emission rights and waste management, as well as a more procedural framework in respect of the issuing of permits and/or other public law consents. Several lower environmental degrees and regulations, including the Environmental Activities Decree (Besluit activiteiten leefomgeving) are based on the EPA.

The Environmental Activities Decree stipulates general rules with regard to environmentally sensitive activities (milieubelastende activiteiten), covering virtually all relevant environmental aspects (e.g.,eg, noise limits, air emission standards and odour limits). General rules under the Environmental Activities Decree apply to all businesses performing certain activities.

Other lower decrees of note include:

- the Environment and Planning Decree (Omgevingsbesluit), which contains procedural rules and rules about general topics on protecting and using the physical environment;
- the Environmental Quality Decree (Besluit kwaliteit leefomgeving), which contains rules on the quality of the physical environment and the performance of tasks and authorities; and
- the Environment Buildings Decree (Besluit bouwwerken leefomgeving), which contains rules on technical aspects of buildings and structures.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

Environmental regulation is allocated to both local and national levels of government. Local governments, such as municipalities, provinces and water authorities, grant permits and enforce them. Regional environmental agencies (omgevingsdiensten) are often instructed to carry out supervisory and enforcement-related tasks on behalf of these authorities.

At the national level, several competent authorities are appointed to supervise specific topics, such as:

- The Living Environment and Transportation Inspectorate (Inspectie Leefomgeving en Transport – ILT) for transport, waste and chemicals, as well as high-risk water discharges;
- The Dutch Emissions Authority (Nederlandse Emissie Autoriteit – NEA) for climate matters and CO2-reduction, as well as the EU emissions trading scheme and renewable fuels regulations;
- Other national supervisory authorities, such as occupational safety (the Netherlands Labour Authority (Nederlandse Arbeidsinspectie) – NLA), mining (State Supervision of Mines (Staatstoezicht op de Mijnen) – SodM), radiation (the Nuclear Safety and Radiation Authority (Autoriteit Nucleaire Veiligheid en Stralingsbescherming)), and pesticides and biocides (the Food and Consumer Product Safety Authority (Nederlandse Voedsel- en Warenautoriteit) – NVWA).

All national supervisory authorities operate under the name and instruction of the competent ministry.

3. What is the framework for the environmental permitting regime in your jurisdiction?

The EPA contains various categories of environmental permits (which can be combined into an integrated permit covering multiple topics, such as operational activities, water activities or nitrogen deposition). A permitting regime applies to environmentally harmful activities with a more substantial impact. Where an activity is not subject to a permit requirement, a notification obligation and general rules may still apply; certain local regulations as listed in the physical environment plan may also apply.

If necessary, an environmental permit to perform a new environmentally harmful activity, or to alter such

activities, is applied for by submitting a permit application to the competent authorities.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Environmental permits are generally linked to the activity (zaaksgebonden) and not to the entity holding or operating the permit. As such, an environmental permit can, in principle, be transferred between entities fairly easily. A transfer of the permit to another entity needs to be notified by the permit holder to the relevant competent authority in writing four weeks prior to the transfer. A transfer will generally not involve any re-evaluation of the permit but may trigger an KYC assessment (Bibob onderzoek) of the new permit holder by the competent authorities.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

Under the EPA, most permit applications are set to be handled within a statutory decision period of eight weeks, which can be extended for a further six weeks. This is, however, not a fatal term. In some cases, the so-called extended preparatory procedure applies, which has a statutory decision period of six months. Again, there are no direct legal consequences if the authorities do not comply with this period.

Under the regular procedure, the decision will be published, and third parties and/or the applicant can initiate objection proceedings against this decision within six weeks of publication. If the extended procedure applies, formal views can be submitted against a draft version of the permit within a six-week period. Parties having a legitimate interest (generally those experiencing some form of consequences from the relevant permit) can subsequently appeal a permit once issued. Depending on the contents of the permit, such appeals can be lodged with a first instance court or a specific higher appellate court (which will generally be the Administrative Jurisdiction Division of the Council of State).

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs (including any considerations in relation to biodiversity or GHG emissions) and to what extent can EIAs be challenged?

Environmental impact assessments are governed by the EPA and are required for certain projects with a more significant environmental impact, or for plans (including decrees and local regulations) that may serve as the basis for permitting of certain projects.

The EIA is part of the legislative or permitting procedure, as the case may be. Legal actions against EIAs are tied into the legal proceedings on a permit or a (change to the) physical environment plan.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

Soil and groundwater contamination caused as of 1 January 2024 is governed by the EPA. Any soil and groundwater contamination predating that date is governed by the Soil Protection Act (Wet bodembescherming), which continues to apply under extensive transitional law provisions. In principle, the entity or person causing soil and groundwater contamination is held to remediate this contamination as soon as possible under a general duty of care. Under certain circumstances, the owner/operator of a property can be held responsible (under public law) for remediation of a pre-existing contamination. In those situations, the owner/operator could eventually also be liable for the remediation costs if the polluter cannot be identified and/or does not offer recourse.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

Prior to conducting ground or groundwater stirring activities, an obligation to investigate the land exists. Local rules may prescribe additional situations in which soil and groundwater investigation is required prior to starting an activity.

Upon ceasing an environmentally harmful activity, a soil and groundwater investigation report may need to be submitted to the competent authorities to illustrate no contamination has been caused that requires

remediation. To substantiate this, it is market to draw up a baseline report prior to commencing activities at a certain location (although often not required pursuant to a positive obligation).

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

An obligation to notify the relevant competent authorities of any incidents might apply, pursuant to permit conditions. There is no general obligation to report each and every (possible) incident. However, a notification duty does apply in the event of calamities if such calamities could result in significant negative consequences for the physical environment.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Dutch civil law allows for a legal claim for compensation of damages or contractual fines as a result of pollution of the air, water or soil within 5 years following the day on which the owner of the contaminated land becomes aware of the damage and the identity of the party liable for the damage. Regardless of such knowledge, claims for damages expire 30 years after a polluting incident in any case.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

Waste legislation is based on the implementation of the European Waste Framework Directive (2008/98/EG), which is incorporated in the EMA and elaborated in the national waste management plan. This regulatory framework defines when a product is qualified as waste – i.e., "any substance or object which the holder discards or intends or is required to discard". Furthermore, this framework set outs registration and permitting requirements.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

Generally, responsibility for the proper handling and treatment of waste lies with the professional waste treatment party. That being said, if the producer of waste provides incomplete or incorrect information to the waste treatment party, as a result of which it cannot properly handle or dispose of the waste, the disposing party could be held liable for this.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

Extended producer responsibility schemes apply for a broad range of products. Mostly, these are based on EU-level extended producer responsibility schemes. Producers may decide to collectivize their take-back obligation, which has been done, for example, for most packaging materials in the Netherlands.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

There is no positive obligation to actively remove any asbestos containing materials in buildings, provided that the presence of such asbestos containing materials does not pose health and safety risks for the users of such building or the general public. Similarly, other deleterious materials found on land or in buildings need to be removed if they pose a health and safety risk. If ACM's are present – but do not cause immediate health risks – owners/occupiers of a building may be required to implement asbestos management policies to mitigate risks of damaging/exposing the ACMs. In case of demolition or remediation works, an prior asbestos investigation may be required while asbestos remediation requirements will apply.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

Some of the most significant product regulations in the Netherlands are: the REACH Regulation (1907/2006/EC), the (revised) CLP Regulation ((EU)2024/2865), the POPs

Regulation ((EU) 2019/1021), the F-Gases Regulation ((EU) 2024/573) and the Biocidal Products Regulation ((EU) 528/2012).

Furthermore, specific products may be regulated further under (mostly) EU-driven product regulation schemes, such as the General Product Safety Regulation ((EU) 2023/988), the EU Deforestation Regulation ((EU) 2023/115), and the EU Eco-Design for Sustainable Products Regulation ((EU) 2024/1781).

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

Energy efficiency of buildings and operational activities is regulated under the EPA, requiring businesses to implement all energy-saving measures with a return on investment of 5 years or less, and to report on the implementation of such measures to the competent authorities every 4 years.

Furthermore, recent legislative changes allow for the possibility at the local level to disconnect specifically defined areas from the gas grid completely (after lapsing of a transitional period), with an aim of having disconnected the Netherlands from the gas grid completely by 2050.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

The Dutch Climate Act has set the target of a 55% CO2 reduction by 2030 (compared to 1990) and a completely CO2 neutral energy production by 2050. Furthermore, the Netherlands strive for net-zero greenhouse gas emissions by 2050, and negative greenhouse gas emissions after 2050.

The EU Emissions Trading System (EU ETS) applies in the Netherlands, with recent expansions of the scheme applying under EU ETS-2. The Netherlands also applies a system whereby renewable fuel units need to be surrendered by certain parties, mainly in the transport sector, thereby incentivising a transition to more sustainable ways of transport.

Climate-friendly construction is regulated under the EPA (and lower decrees), as is the implementation of energy-saving measures for businesses.

18. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

The Netherlands strive to become greenhouse gas neutral by 2050. Please also refer to the above response.

19. Are companies under any obligations in your jurisdiction to have in place and/or publish a climate transition plan? If so, what are the requirements for such plans?

Climate transition plans must be drawn up by companies in scope of the Corporate Sustainability Due Diligence Directive (CSDDD). The Dutch implementation of the CSDDD is currently under development and in early stages of parliamentary handling. In climate transition plans, in scope companies must reflect on the way in which their business model and business strategy is tailored towards a transition to a sustainable economy and reaching the Paris Agreement goal of not exceeding 1.5 degrees Celsius temperature increase, as well as how the company aims to be climate neutral by 2050. Furthermore, if applicable, the company must reflect on its exposure to coal, oil and gas-related activities.

20. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? Who are the regulators in relation to greenwashing allegations?

Sustainability claims are monitored by the Authority for Consumers and Markets (Autoriteit Consument & Markt – ACM). Incorrect sustainability claims are considered greenwashing and may be enforced upon with governmental action.

21. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

Under the Horizontal Block Exemption Regulations (HBERs) certain research and development and specialisation agreements are exempted from Art. 101 (1) TFEU. The Dutch Authority for Consumers and Markets (Autoriteit Consument & Markt – ACM) has issued

guidelines on when certain sustainability agreements between market parties can be deemed acceptable. In three instances (relating to asphalt, recycling of coffee capsules and sustainability agreements between banks), the ACM has since issued an informal ruling on acceptability of such arrangements between market parties.

22. Have there been any notable court judgments in relation to climate change litigation over the past three years?

The Netherlands has known quite a number of climate change litigation cases over the last years, including quite extensive (administrative law) litigation on nitrogen deposition and the permissibility thereof, and – recently – the ruling by the higher appeals court in the Milieudefensie v. Shell case, in which the higher appeals court ruled that there is no formal legal obligation for Shell to limit its scope 3 emissions. Furthermore, there are various climate change class actions by environmental interest groups against the Dutch State, including the Urgenda case in which it was ruled that the Dutch State should take additional measures to reduce greenhouse gas emissions in the Netherlands. Various climate change class actions against the Dutch State are currently pending.

23. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

As the environmental legislative framework has been extensively overhauled as of 1 January 2024, with the introduction of the EPA, no major legislative change is expected in relation to climate change in the near future, other than pursuant to changes in EU law.

24. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities? Transactions

Under Dutch law, breaches of environmental law are primarily addressed by government authorities under administrative law. Administrative law liability can lead to sanctions and measures being imposed by a Dutch regulatory authority. Administrative sanctions can be divided into punitive sanctions (administrative fine) and remedial sanctions (administrative enforcement order and order subject to a penalty fine).

Secondly, both the company and its de facto manager(s) (feitelijk leidinggevende(n)) might be liable under criminal law as most environmental violations (also) qualify as "economic offences". If committed with intent or as a result of wilful misconduct, such offences qualify as a crime (misdrijf); if committed without intent, they constitute (mere) criminal infringements (overtredingen). In short, the offender could face a fine, community service (taakstraf) or even imprisonment, with more severe punishments being applicable to crimes. Administrative and criminal enforcement can coincide under certain circumstances.

Thirdly, civil liability plays a role when an environmental breach causes an unlawful act towards a third party – e.g., in the case of harmful pollution or hindrance. Civil liability could lead to the obligation to pay damages to the aggrieved party.

25. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

From a government enforcement point of view, environmental liabilities generally transfer to a buyer in the context of a share deal (as the perpetrating entity remains the same), whereas such environmental liabilities generally remain with the seller in case of an asset deal (provided the infringement does not persist and continue following the transaction). It is market practice to include contractual arrangements to allocate risks and costs for pre-acquisition environmental liabilities in the context of a transaction. Although this does not take away the risk of government enforcement regarding breaches of environmental law and/or pollutions caused, potential damages as a result of such breaches, pollution and/or corresponding government enforcement, can be allocated to a seller or buyer in contractual arrangements.

26. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

There is no general statutory obligation for a seller to disclose any and all information, although there might be a (pre-)contractual duty to disclose certain information that is specifically requested by or may reasonably be expected to be of specific interest to, a potential purchaser.

Environmental due diligence is common in transactions, but the intensity of such investigation may vary depending on the target. If the environmental impact of a business is more significant, it is common that more thorough (technical and legal) environmental due diligence is conducted.

27. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

There is no compulsory environmental insurance by law in the Netherlands. It is possible to take out environmental damages insurance covering the financial risks of environmental damage, such as surface water or soil contamination. Environmental damages insurance generally does not cover damages relating to underground storage tanks.

28. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Depending on the scope of the activities conducted, certain reporting obligations may apply, such as filing an annual report on environmental aspects of the business pursuant to the European Pollutant Release and Transfer Register Directive, or in relation to implemented energy-saving measures.

Annual reports on environmental aspects are publicly accessible, whereas most other reported information on environmental aspects can be requested from competent authorities by interested parties pursuant to an Open Government Act (Wet open overheid) request.

29. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

In principle, environmental information needs to be disclosed to (interested) parties requesting such information from the competent authorities, under the Open Government Act (Wet open overheid).

30. Are entities in your jurisdictions subject to mandatory greenhouse gas public reporting requirements?

Larger businesses (100 employees or more) in the Netherlands need to report on the CO2-emissions of the commute of their employees. Businesses that need to submit annual environmental reports will also need to report on greenhouse gas emissions, amongst other things.

31. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

The EPA has entered into force on 1 January 2024, ushering in a new era in Dutch environmental law. The EPA has introduced quite some (formal and procedural) changes and has attributed additional powers to local government levels, allowing for more local deviation on certain aspects of environmental law. It is expected that local governments will take first steps into applying these new powers in practice in the near future.

Contributors

Guido Koop
Partner
guido.koop@loyensloeff.com

Jan de Heer
Senior Associate
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