

Memorandum on the Dutch Recovery Act

April 2010

- [Introduction](#)
- [Interim measures](#)
- [Structural measures](#)

[View individual pages](#)

Introduction

On 31 March 2010 the Dutch Crisis and Recovery Act (*Crisis- en herstelwet*, the **Recovery Act**) came into force. The Recovery Act aims to accelerate the realization of infrastructure projects in order to stimulate the national economy, especially in the fields of sustainability, energy and innovation.

To achieve this objective, the Recovery Act introduces *interim* and *structural* measures to overcome certain administrative obstacles that currently slow down economic development. The interim measures are focused on a selection of specific projects which are considered to have a significant (positive) impact on employment, economy and spatial sustainability. These measures shall only be effective until 1 January 2014. The structural measures are of a more fundamental nature and shall remain effective after 1 January 2014.

This newsletter provides an overview of the most relevant temporary and permanent measures in the Recovery Act.

Interim measures

The Recovery Act stipulates that on certain projects that stimulate economic development and spatial sustainability, a less time-consuming and complicated administrative procedure is applicable. These are projects in the field of sustainability, accessibility and construction, such as wind farms, adjustments or renovations of several motorways (the A1, A2, A4, A6, A 74 and the N61) and the restructuring of housing areas (a.o. the Zuidplaspolder near Gouda and the city harbour of Rotterdam). An overview of all projects is attached as [Annex 1](#).

Administrative procedures

To remove the current obstacles in the field of administrative law which slow down the realization of the Projects, the Recovery Act stipulates the following temporary measures:

- restricting the right to appeal to governmental and administrative authorities against decisions concerning the Projects. The governmental and administrative authorities can only issue an appeal if they are the applicant of the decision (*section 1.4 Recovery Act*). It should be noted, however, that the governmental and administrative authorities can still lodge an appeal in civil proceedings, for example based on a claim of tort;

- minor material shortcomings in an administrative decision (*besluit*) can be disregarded by the court if it's likely that interested parties (*belanghebbenden*) are not put at a disadvantage by such action (*section 1.5 Recovery Act*);
- issuing a pro-forma appeal (i.e. an appeal in which the grounds are added at a later stage) is not permitted (*section 1.6 Recovery Act*);
- the appeal procedure has been accelerated by requiring a ruling within six months at the receipt of the appeal (*section 1.6 Recovery Act*). An exception to this rule is applicable when an administrative loop (*bestuurlijke lus*) is applied (*section 1.7 Recovery Act*). The administrative loop entails the administrative courts giving an interlocutory judgment allowing administrative authorities the possibility to rectify legal shortcomings in its decision, instead of nullifying the decision as a result of the shortcomings. In such a case the administrative courts are required to give judgment (i) within six months of the interlocutory judgment or (ii) within six months of the period of appeal (*beroepstermijn*);
- the principle of relativity (*relativiteitsvereiste*) is introduced in administrative procedures, which prohibit interested parties to base their appeal on grounds which do not relate to their specific interest (*section 1.9 Recovery Act*);
- administrative authorities that are required to take a new decision after the annulment of the previous decision by the administrative court, can take this decision based on the facts on which the annulled decision was based (*section 1.10 Recovery Act*). Consequently, the administrative authority is not required to re-do the entire (factual) decision; and
- the process of environmental impact assessment is streamlined by temporarily abolishing the obligation to report on reasonable alternatives for the relevant project (*section 1.11 Recovery Act*). These measures should result in a substantial shortening of administrative procedures and also in a decrease in project costs.

Pursuant to the explanatory memorandum of the Recovery Act, it is the intention of the Dutch government that the above-mentioned temporary procedural amendments in the nearby future will lead to the amendment of the General Administrative Law Act (Algemene Wet Bestuursrecht) and become permanent procedural regulation.¹

1. TK 2009/10, 32127, nr. 3, p.10

Structural measures

The Recovery Act permanently amends several rules under current statutory law in the field of spatial planning, energy and environment in order to negate some of the current regulatory obstacles in administrative law. These structural measures not only effect the Projects but also the regulatory framework regarding environmental and spatial planning, making the Recovery Act of interest to other projects.

The regulatory framework regarding environmental planning shall be amended to the effect that the number of permits required under the Nature Protection Act shall be decreased to simplify procedures and to ameliorate the implementation of the so-called Natura 2000-areas as set forth in the Habitat Directive. The Recovery Act introduces an exemption from the permit requirement as set forth in section 19 of the Nature Protection Act in case of the *continuance* of an existing nitrogen deposition that does not lead to an increase of the nitrogen deposition as a whole (i.e. on balance) in the concerning Natura 2000-area (*section 3.8 Recovery Act*). For *new and or amended projects* a permit is required for the deposition of

nitrogen, unless parties can ensure that the nitrogen deposition on balance does not increase in the concerning Natura 2000-area.

The amendments also concern a streamlining of the Compulsory Purchase Act, the introduction of a provincial co-ordination regulation (*coördinatie-regeling*) for medium-sized wind farms and the introduction of a so-called sound reduction plan (*geluidreductieplan*) based upon the Noise Nuisance Act.

Disclaimer

This publication is written as a general guide only. It is not intended to contain definitive legal advice which should be sought as appropriate in relation to a particular matter. Extracts may be copied provided their source is acknowledged.

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