

The proposed Crisis and Recovery Act

The government is aiming to resolve the current stagnation in the construction industry by means of the proposed 'Crisis and Recovery Act' (*'Crisis- en herstelwet'*). The objective is for it to become easier and quicker for spatial planning and infrastructure projects such as housing projects to be realised. Accelerated decision-making, shorter procedures and a loosening of regulations are intended to bring this about. The proposed legislation was created in a record time. The first moves were made in the spring of 2009 and now the bill is already before the Netherlands Senate. The intention is that the Crisis and Recovery Act is to come into force on April 2010. The act is mainly temporary in nature and will lapse as of 1 January 2014.

The proposed legislation has a wide scope. Almost all large and well-known infrastructure projects (A4 motorway in Midden Delfland, Zuidplaspolder, The Hague International City) fall under the scope of the bill. But it also extends to cover new projects that are still to commence in the areas of infrastructure and urban regeneration.

Project implementation decision

A new feature under the proposed legislation is the possibility to request a project implementation decision for certain types of housing projects. Such a project implementation decision will replace the various permits (building permits, tree-felling permits, utility permits, environmental permits), exemptions and other decisions normally required for this kind of project. Additional facilities such roads, schools, shops and parking can also be realised under one and the same project implementation decision.

Combining all these decisions in a single project decision means housing projects can be realised more quickly.

Requirement of relativity

The proposed Crisis and Recovery Act contains a so-called 'requirement of relativity'. This means that only citizens who have a personal interest of their own are able to appeal a decision. By way of example: a neighbour files an objection to a building permit. In court he advances that the construction will be built too close to the property divide. However, the construction is going not to be built on the side of his house, but on the side of the other neighbour. Accordingly, the first neighbour probably will not himself experience any nuisance from this construction. It is then in question whether in such case he has a personal interest. Things are different, of course, for the other neighbour on whose side the construction is to be built; he will quickly have a personal interest.

Expropriation

The proposed Crisis and Restoration Act also includes accelerated rights of expropriation. For instance, the bill enables expropriation and transfer of ownership to take place before the zoning plan forming the basis of the expropriation has become irrevocable. If it later becomes apparent that the zoning plan failed to make the finishing line, the former owner can have the property returned. However, the compensation received does have to be given back. Rather than return, the former owner can also opt to seek additional damages. The proposed amendments to the law on expropriation are permanent and will continue to remain in force after 2014.

Development areas

Additionally, it will become possible for so-called 'development areas' to be designated. These are areas situated within existing urban areas or on existing business parks. Within these areas, it is possible to free up environmental space to allow new projects (housing and otherwise). This can be done by setting more stringent environmental requirements for existing businesses. By curtailing the environmental impact of existing activities, environmental space is freed up for other use. An example would be the construction of a barrier to reduce noise pollution. The area thus freed up can be then used for the development of new projects. Additionally, temporary (maximum of 10 years) deviations are allowed from the environmental standards in force. Eventually, however, all environmental quality requirements will have to be satisfied.

In conclusion

The proposed Crisis and Recovery Act constitutes far-reaching government measures. Time will tell whether these measures will have the desired results. The bill is subject to quite a degree of criticism from academics, legal practitioners and politicians. For instance, the measures under the bill are often not seamlessly aligned with existing regulations.

In principle, the plenary discussion of this bill in the Netherlands Senate is scheduled for 16 March 2010. However, now that the government has fallen it is in question whether the Senate will process the bill. Even if a majority in the Senate would be in favour of this, it is possible that the Senate declares the bill to be too controversial because the majority in the eyes of many members is nonetheless too small to push through this legislation following the fall of the government.

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