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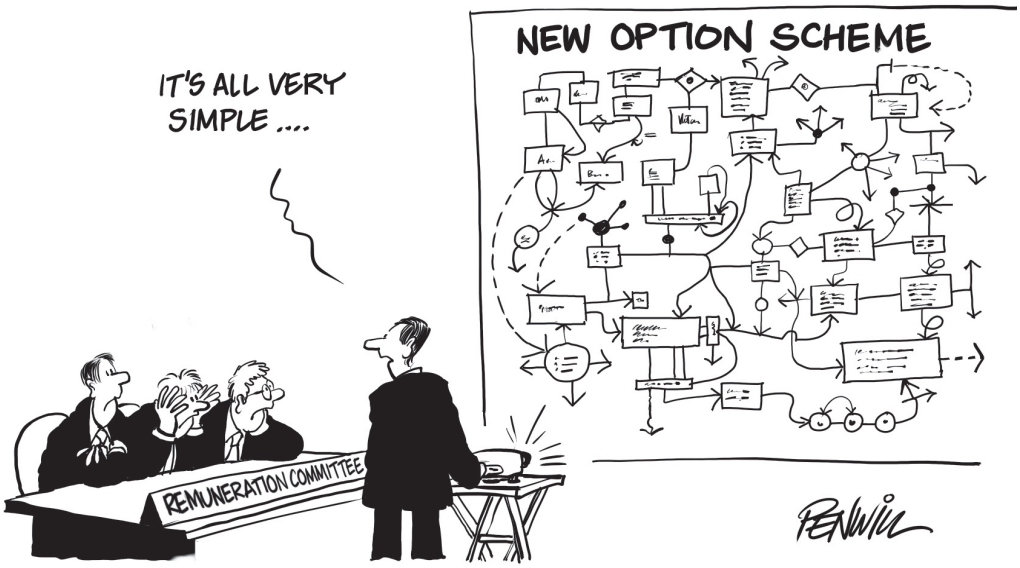

An analysis of how planning practitioners frame the Dutch Environment and Planning Act

Simply better, complexly different or business as usual?

Minor thesis Strategic Communication, Wageningen University
D. Hollemans

Understanding today.
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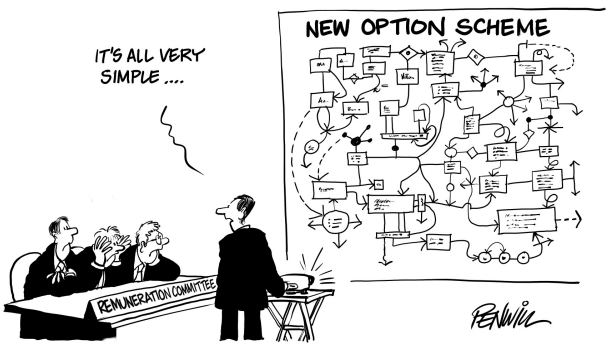

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Abstract

This study focuses on the Dutch Environment and Planning Act (in Dutch: Omgevingswet). Which is a law that as from 2018 will replace a plethora of laws, orders in council and rules of law that currently determine what is permitted in Dutch spatial planning. By means of a frame analysis of various semi-structured interviews and documents, it is explored what planning practitioners expect of that act. It is found that the planning practitioners consulted for this research align with the framing in the Environment and Planning Act that the current system of environmental and spatial planning law is complicated and not completely coherently organised. But the planning practitioners also oppose frames in the Environment and Planning Act. The ambition in the Environment and Planning Act to deregulate and decentralise spatial planning is framed by those planning practitioners as leading to the opposite. Besides deregulation and decentralisation, the Environment and Planning Act has other core elements, like building a planning culture based on trust, using an area-specific approach to spatial planning, providing planning practitioners with more discretionary space and using open standards. These too evoke frame opposition among or are framed sceptically by the planning practitioners consulted for this research.

Keywords: decentralisation, deregulation, Environment and Planning Act, environmental and spatial planning legislation, environmental and planning policy, frame analysis, law reform, Omgevingswet.

Preface

This minor thesis might have the character of a draft version of an article, but I believe it cannot do without a preface to thank the people that supported me in writing this draft article.

First of all, I would like to thank my supervisors Peter Feindt and Raoul Beunen for their patience (because writing this minor thesis took a considerable amount of time) and their valuable feedback, tips and advices. Their advices greatly helped me to structure my thoughts and come to a feasible research approach, as such I learnt a lot from them. Moreover, I would like to thank them for offering me the possibility to write this thesis as a draft version of an article to learn to say more with less words. Still, I have used more words than initially agreed on, I believe it helped to improve my writing skills.

This thesis has been written at Antea Group (a consultancy and engineering agency) and would like to thank Arno Derks, Barbara Evers, Robert Forkink and Edwin Oude Weernink of Croonenburo 5 respectively Antea Group for offering me a place to write this thesis. Hopefully it has become a win-win-situation. At least to me it has, being able to benefit from the expertise at and network of Antea Group helped me in writing my thesis.

Subsequently, I want to thank Edwin Oude Weernink (project manager spatial planning and mobility at Antea Group) for his advices, suggestions and feedback while writing this thesis. Moreover, I would like to stress my appreciation for all the people with whom I discussed the contents of this thesis and the research process, especially Geert Roovers. Additionally, I would like to thank Jeroen Eskens and Dennis Vecht for their feedback on the draft of this thesis. Another important group of people that I would like to thank for their cooperation and for the information they provided, are the consulted planning practitioners.

Thanks also to my colleagues at Antea Group for providing me with all kinds of spatial planning assignments. Those helped me to get a grip on the practice of spatial planning and to see the relation between that practice and thesis. Because of that, the implications of the Environment and Planning Act became clearer and the matter became less abstract. It also helped me in positioning my thesis on the interface of academics and practice. More importantly, those assignments were just fun to carry out!

Lastly, I would like to thank Lex Runia for bringing the quote on the next page to my attention which offers a rather cynical perspective on laws that are supposed to make things simpler (just like the Environment and Planning Act). As such this quote refers to the title of this minor thesis, whether it will also apply to the Environment and Planning Act remains to be seen.

“The new Act makes inheritance (…) very much simpler,' said Mr. Murbles, (….).
'I bet it does,' interpolated Wimsey. 'I know what an Act to make things simpler means. It means that people who drew it up don't understand it themselves and that every one of its clauses needs a law-suit to disentangle it.”

From: Dorothy L. Sayers, Unnatural Death (1927), chapter XIV

Oosterhout, December 2015,

Daniël Hollemans

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1 Introduction

The system of spatial planning and environmental legislation in the Netherlands is currently experiencing a drastic revision. The ambition is to merge a substantial part of the existing legislation applicable to spatial planning and environmental protection into one law, the Environment and Planning Act (from now on abbreviated to EPA). Currently, the EPA is draft legislation, the legislative proposal has been adopted by the lower house of parliament in July 2015 (Rijksoverheid, 2015), implementation of the act is scheduled for 2018 (Omgevingswet, 2014).

Planning practitioners will have to work with the EPA in the future, therefore it is important to analyse how they perceive that act. This study provides insight in how planning practitioners perceive the EPA and how they react to it. As such, it elucidates the way planning practitioners will take position in the debate about the EPA and whether they expect that the EPA makes their practice simply better (as is the motto of the EPA), complexly different or that it remains business as usual.

The development of the EPA is comparable to other reforms of legislation focused on deregulation and decentralisation, for instance in Belgium (Leinfelder, 2015), England (Allmendinger and Tewdwr-Jones, 2009; Lord and Tewdwr-Jones, 2012; Gunn and Hillier, 2014), France (Booth, 2009) and Germany (Zöttl, 2000; Gabriel, 2009; Trüe, 2009).

The EPA is presented as a reaction to the current system of environmental and spatial planning legislation, which is perceived as too complex and inhibiting sustainable development (Omgevingswet, 2014). The declared objectives of the EPA are (Roels et al, 2013):

- accelerating and enhancing decision-making procedures;
- increasing the predictability, user-friendliness and intuitiveness of legislation;
- come to a coherent approach to policy making, decision-making and legislation;
- increase discretionary space and stimulate use of it by facilitating a flexible approach to applying legislation so that competent authorities and planning practitioners can translate the general content of legislation to custom-made regulations that match a specific project/context.

In the EPA, it is argued that it better matches the changing role of all tiers of the Dutch government where it concerns environmental and spatial planning issues. This changing role consists of the national government decentralising as much tasks and responsibilities with regard to the physical living environment as possible, to the lowest possible tier of government (which is often the municipal level). The claimed rationale for this is the presumption that lower tiers of government are best equipped to take into account local

specificities and area-specific circumstances when taking decisions regarding the physical living environment and that it helps to employ local knowledge (Omgevingswet, 2014). This echoes decentralisation.

According to De Roo et al (2012), Dutch spatial planning is characterised by a tendency to deregulate to stimulate local development and decentralisation in an attempt to let legislation better match the context to which it has to be applied. This tendency is also manifest in the EPA. Lloyd (2015) alleges that since 2008 all alterations to Dutch spatial planning and environmental legislation focused on speeding up spatial development processes. The EPA is also presented as a means to speed up development processes and as a means to facilitate developments when they are financially feasible (Omgevingswet, 2014). Lloyd (2015) subsequently claims that since 2008 a political pressure to deregulate and abandon environmental legislation to promote developments that are deemed financially feasible structures ambitions to reform spatial planning and environmental legislation. Since 2008 four major revisions of spatial planning and environmental legislation have occurred (Lloyd, 2008), planning practitioners have thus been confronted with multiple attempts focused at deregulating spatial planning.

Thus Dutch planning practitioners have been confronted with multiple deregulatory revisions. This while Zuidema and De Roo (2015) claim it is senseless to pursue decentralisation without first assessing whether the local authorities that have to work with decentralised policies and laws can work with it. With the upcoming EPA that also has a deregulatory character, the question emerges what planning practitioners expect of the new attempt at deregulation and how they perceive the discussion about the deregulatory EPA. This contributes to understanding processes of deregulation and prevents a senseless pursuit of deregulation when planning practitioners do not see the added value of it and therefore do not adhere to policy objectives. Additionally, this paper contributes to an enhanced understanding of how to match the EPA to spatial planning practice and creates awareness whether and where there might be tensions between objectives of the EPA and the way practitioners perceive these objectives. That can be elucidating for law makers.

Understanding how planning practitioners perceive discussions about the upcoming law reform and the inherent ambition to deregulate is also important to understand how planning practitioners implement policies and contributes to an understanding of what will happen after deregulation. Evers (2015) explains that it is not the intent of the ministerial lawmakers that determines the implementation of an act, rather it are planning culture, governance relations and area-specific issues. Moreover, an important factor when implementing a policy or law are the effects it generates as the result of the interpretation of the policy/law by constituents (here: planning practitioners). Griffiths (2003) has

demonstrated that these effects can be unintended and as such deviating from the policy/law objective. Exploring how planning practitioners perceive an act they will have to work with, provides the opportunity to analyse where the draft version of that act matches with and deviates from their expectations. Which is essential for successful implementation of the EPA.

The importance of Griffiths' (2003) argument is augmented by the fact that individual actions add up and shape implementation and norms. Additionally, ideals have an important influence on the formulation and implementation of policies and laws. Therefore, the effects of (reforms of) policies and laws need to be understood in the realms of planning practice because they get meaning there (Van Dijk and Beunen, 2009). These effects also need to be understood in the realms of planning practice because practitioners act on the basis of their judgement, they are not passive receivers of hierarchically imposed policies and laws but flexibly and realistically interpret and implement policies in interaction with other practitioners (Maynard-Moody and Musheno, 2000). The situations those people work in are too complex to be reduced to standardised rules and often require responses to specific dimensions of situations, planning practitioners have a crucial role in operationalising and applying policies and laws. The perspectives of law makers and planning practitioners having to work with planning laws can even be at odds with each other (Lipsky, 1980).

1.1 Framing

For this research, frame analysis is used to understand how planning practitioners perceive the EPA. Frame analysis is based on the premise that people make sense of a situation for both themselves and others by means of certain perspectives or frames that are developed in interaction with other people (Dewulf et al, 2009). The central research question in this article is how do planning practitioners align or oppose frames in the draft version of the EPA?

A framing perspective is interesting for this topic because planning practice is concerned with two arenas, legislation and its intent and the way planning practitioners deal with this legislation in practice. The gap between the way a problem is framed by high-level policy makers or legislators and the way planning practitioners deal with this framing and the problem itself can diverge, which leads to policies being implemented in a way that differs from the expectations of the initial developers (Lipsky, 1980). The actors involved with the EPA might thus oppose each other's goals, values and beliefs and frame analysis can elucidate who opposes what and how (see also Dupuis and Knoepfel, 2013).

Van Lieshout et al (2013) use frame analyse to scrutinise explanatory memoranda accompanying agricultural policies issued between 1950 and 2012. Using frame analysis to explore memoranda is fruitful, Van Lieshout et al (2013, p.36) argue, because in "*strategic documents like memoranda*" actors will highlight certain aspects but also leave out issues that they do want to emphasise. Frame analysis provides insight in the way meanings are constructed in explanatory memoranda and the way these meanings are kept intact or changed.

Rinfret (2011) used frame analysis to understand how interest groups influence the development of pre-proposals for environmental legislation in the United States of America and claims that the first phases of a law making process (like the stages the EPA is currently in) are not (yet) explored extensively and that frame analysis is a good means to explore the first stages of a rule making process. Until now, no frame analysis has been used to gain an enhanced understanding of the way planning practitioners perceive the EPA (which at the moment of writing is also draft legislation) or to analyse how planning practitioners perceive discussions about draft legislation and/or deregulation. Rinfret (2011) concludes that studying framing practices in the early stages of a law making process has a great potential because a substantial amount of previous research was focused on later stages of law making process. Rinfret (2011) particularly suggests to analyse which frames people use in law making processes and that is done in this this study.

1.2 Content

Following this introductory chapter is the theoretical framework. Chapter 3 elaborates on the methodology used to conduct this study. A history of the predecessors of the EPA is to be found in chapter 4. Chapter 5 contains an overview of the core elements of the EPA. The results of the study are to be found in chapters 6 and 7. Chapter 8 contains the reflection on and discussion of the results and chapter 9 contains the conclusion.

2 Framing theory

The concept of frame analysis in relation to policy making has been introduced by among others Schön and Rein (1994) and comprises "*shaping, focusing and organizing*" of perceptions (Gray, 2003, p. 11). From a constructivist perspective, policy meaning is found in the ways policy formulators use and modify the content of and messages about policies (Stone, 2002; Sykes, 2006) and the perception of a policy is always an interpretation (Teubner, 1989; Thompson et al, 1990). From this constructivist perspective, policies are construed continually by various actors and therefore have diverging meanings (Van Hulst and Yanow, 2014). Frame analysis explores the diverging ways in which a policy is construed and given meaning, providing insight in what actors expect of policies they formulate and/or have to implement.

A frame is an implicit theory of a situation which models prior thought and eventuates action, ultimately rationalising that action to align it with prior thinking. By doing so, frames help people to make sense of their social realities (Van Hulst and Yanow, 2014). Frames are used to organise knowledge and experience and to organise and predict the meaning of new information (Gray, 2003). As such, people use frames to emphasise certain aspects of an issue while backgrounding others (Entman, 1993; Van den Brink, 2009). In this context, framing enables actors to understand the specificities of a situation and to come up with paths of action for handling the situation (Rein and Schön, 1977).

Frame analysis is based on the premise that people use and construct frames in interaction with each other to make sense of a situation, both for themselves and for others (Dewulf et al, 2009). This interactive process starts by an actor ascribing meaning to something. Based on this ascription, other meanings are ascribed by other actors and "details and generalities inform one another". As a result of this, an enhanced or at least altered other understanding of the situation at hand emerges (Van Hulst and Yanow, p. 7).

Following Dewulf et al (2009), this study takes an interactive approach to framing, meaning that framing is defined as a temporal ascription of meaning to something and comes about in dynamic and continuous interaction. The cognitive approach to framing, in which frames are defined as memorised representations being applied to situations (Dewulf and Bouwen, 2012), is not used in this study. Nonetheless, Dewulf et al (2009) claim that cognitive frames are also constructed in interactions and interaction can also change the cognitive frames. Thus, when cognitive frames are used to make sense of the EPA, they are taken up in this study, but from an interactional perspective.

The idea of a frame as modelling thought and eventuating action (Van Hulst and Yanow, 2014), implies a vicious cycle of interaction and negotiation which constantly (re)produces or alters frames. Also Benford and Snow (2000), Gray (2003) and Van Lieshout et al (2011;

2013) recognise that there is a reciprocity of framing (shaping and organising perceptions and knowledge) and framing inspired action. This reciprocity on the one hand produces a model of the world and on the other hand produces a model for action in that world. This production of models takes place unconsciously, simultaneously and interactively (Van Hulst and Yanow, 2014, p.7). This cyclic process thus results in a rendition of the perceived reality that is radiated through the frame and also construes reality. This is a self-reinforcing process because the rendition of reality can guide action, which can bring about the envisaged reality. Therefore, analysing how the perception of reality is framed is interesting as it suggests how people will act in the future. The vicious cycle described here (and visualised in figure 2.1) shows that organising perceptions and knowledge leads to a frame and a frame leads to a new organisation of perceptions and knowledge. This is an infinite regress (Teubner, 1989), which means the research can be repeated an interminable amount of times. This study deals with this infinite regress by going through half of the cycle depicted in figure 2.1 (from organising perceptions and knowledge to the emergence of a frame).

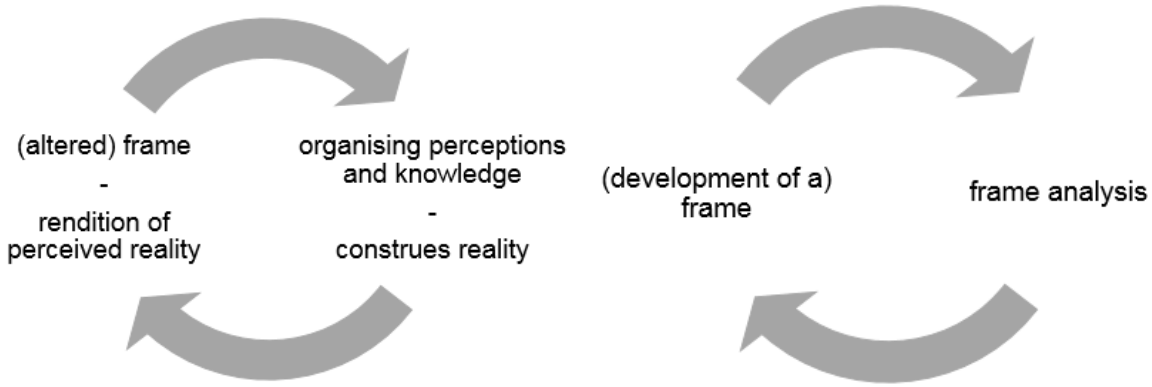

Figure 2.1 (left) Vicious cycles visualising the emergence of a frame. Figure 2.2 (right) Vicious cycle from frame analysis to frame and back to frame analysis

Moreover, the frame analysis will also lead to a new (or altered) frame. This research creates a frame on the EPA which can be scrutinised in subsequent frame analyses, this is a second infinite regress (Teubner, 1989). To deal with this second infinite regress, this is limited to the upper half of the cycle (figure 2.2), from frame analysis to (development of a) frame).

Cooperation is important in public policies. Governmental organisations and societal actors together develop and implement policies. Therefore, the context in which policies are developed sees many different framers and more situations being framed which can make policy development increasingly complex (Van Hulst and Yanow, 2014). This complexity can impede policy development because it can lead to conflicts about the way the issue is framed between the actors involved, moreover issues can arise between different tiers of government that all frame the issue differently (Scholten, 2013).

2.1 Aligning and opposing frames

To me, Van der Stoep's (2014) everyday framing processes indicate that framing takes place everywhere and all the time and is not limited to certain moments, but a way of analysing interactions between actors. In those interactions, actors construe a strategic perspective that guides future thinking and action. This strategic perspective does not solely relate to consciously manipulating, but it rather signifies that framing is intricately intertwined with communication. Not only framing process take place everywhere and all the time, but in my understanding, Van der Stoep's (2014) analyses of everyday framing process also point towards the vicious cycles (figures 2.1 and 2.2) taking place everywhere and all the time. From Van der Stoep's (2014) elaboration on everyday framing practices a perspective emerges in which it is impossible to see the intentions of policy makers and policy objectives as a dichotomy. Intentions cannot be analysed directly (Van Assche, 2007) and a policy objective is a social construction, not something that is out in the open in the policy itself (Yanow, 1993). A policy only gets meaning when people ascribe meaning to it. These ascribed meanings will be studied by frame analysis.

The framing of the EPA takes place in situations like congresses, public hearings, meetings and discussions (the latter two both formal and informal), to speak with Van der Stoep (2014) these occasions are called everyday framing processes. To answer the central research question of this study (how do planning practitioners align or oppose frames in the draft version of the EPA?), first the aligning, and opposing of frames in everyday processes has to be defined, which is done in the paragraphs below.

2.1.1 Frame alignment

Benford and Snow (2000) define frame alignment as the strategic efforts to link interests and frames of a person or multiple persons to those of prospects. Strategic efforts imply that frame alignment is here defined as focused on gaining and/or maintaining support from prospects. In line with McCaffrey and Keys (2000), trying to align individuals with the frames in the EPA is here understood as a strategic recruitment activity.

Gray (2003) contended that frame alignment occurs when individuals discover their frames match that of another individual or a group of individuals. In that process, individual ideas, values and beliefs become attuned to those of an organisation or a constellation of individuals and their activities, goals and doctrines. As a result of this, the individual takes on a new identity which is in line with the frame of the group (Gray, 2003). Thus, frame alignment is in this research defined as a strategic recruitment activity leading to the formulation of new frames based on existing frames and new information focused on gaining and maintaining support.

2.1.2 Frame opposition

Frame opposition is here defined as a planning practitioner opposing the frames employed in the explanatory memorandum of the EPA and/or the rationale(s) behind the development of that act, because the practitioner does not agree with them. In this instance, meaning and identity are construed to directly contradict the EPA.

Taken together, these four strategies enable looking at all sides of the EPA and all ways it is framed by planning practitioners. In my understanding, the distinctions between the different ways the EPA will be framed only emerge when these four strategies are analysed in conversation with each other.

2.2 Approach

A unified definition of frame analysis and a systematic approach to it are lacking (Gray, 2003; Dewulf et al, 2009; Rinfret, 2011). This article deals with how actors in everyday interactions employ whole story frames, which are concise summaries of the issue at hand (Gray, 2003). Rinfret (2011, p.235) calls the whole story frames "*instructive frames"* and states that they indicate how actors summarise, interpret or define issues during the stages in which a law is still a legislative proposal. Such frames arise when actors summarise what they perceive as defining stages in the development of a law (Rinfret, 2011). The focus on this article is predominantly on whole story frames, which I define as the contraction of a complex argument into an idiom, about (the development of) the EPA and the way actors align with or oppose these frames.

The frames emerged from the way respondents talked about a particular subject. This was coded and on the basis of these codes, the frames above were determined. The focus of this research is on textual frames in that sense that the frames in the draft version of the EPA are compared with the frames planning practitioners employed during the interviews. Conform Dewulf et al (2009) frames are analysed as a means to (un)consciously ascribe meaning to the EPA.

3 Methodology

This chapter elaborates on the methodology used to perform this study.

3.1 Data collection

3.1.1 Interviews

To explore the perception of planning practitioners, twenty-one interviews with such professionals were conducted in the period between April and July 2015. The interviews with planning practitioners provided a window on how planning practitioners talk about the EPA to each other and frame it towards each other. The objective of the interviews was to discover:

- which frames respondents use to make sense of the (development of) the EPA;
- the respondent's vision on the argument of the minister of Infrastructure and the Environment that spatial planning practice is hampered by the complexity of legislation;
- what the respondent expects of the EPA;
- the respondent's opinion on the ambition of the minister of Infrastructure and the Environment to provide planning practitioners in general with more discretionary space.

Table 3.1 shows the functions of the consulted planning practitioners and the organisations they work at. The number in the left column corresponds with the number used in chapter 5. Thus, a statement made by respondent 5 is uttered made by the planning practitioner with number 5 in the table.

The planning practitioners in table 3.1 were selected because they have considerable experience in spatial planning (or a specific spatial planning discipline like land expropriation) and had either very thoroughly familiarised themselves with the EPA at the time of the interview or new very little about it. This was done to analyse whether experienced planning practitioners with a lot of knowledge about the EPA framed that act differently than experienced planning practitioners with little to none knowledge about the EPA.

Table 3.1 Overview of consulted planning practitioners

Number	Function	Organisation
1.	Planning practitioner	Province
2.	Policy officer	Ministry
3.	Planning practitioner	Consultancy agency
4.	Planning practitioner	Municipality
5.	Planning practitioner	Municipality
6.	Planning practitioner	Municipality
7.	Planning practitioner	Consultancy agency
8.	Planning practitioner	Consultancy agency
9.	Planning practitioner	Municipality
10.	Planning practitioner	Province
11.	Planning practitioner	Consultancy agency
12.	Planning practitioner	Municipality
13.	Alderman	Municipality
14.	Planning practitioner	Directorate-General for Public Works and Water Management
15.	Planning practitioner	Directorate-General for Public Works and Water Management
16.	Planning practitioner	Consultancy agency
17.	Planning practitioner	Consultancy agency
18.	Manager	Municipality
19.	Planning practitioner	Municipality
20.	Planning practitioner	Municipality
21.	Planning practitioner	Province

The local level is an important arena in spatial planning because it is the only level that has the mandate to draw up a legally binding land-use plan (something that will remain unchanged under the EPA), which declares why most people consulted for this study operate at the municipal level. Following a European trend focused on providing the local level with more autonomy, spatial planning tasks have been devolved to the local level as of 2005. But simultaneously, the national government kept influencing spatial planning (Nadin and Stead, 2008 in Pojani and Stead, 2014).

The names and exact organisations the respondents work(ed) for, are not revealed to ensure their anonymity. An important criterion when selecting respondents was they had to be involved in the daily practice of spatial planning. Potential respondents were initially selected prior to the interviews by asking acquainted planning practitioners whether they knew colleagues that already familiarised themselves with the EPA. Subsequently respondents were asked to name additional interviewees. The selection process was thus was a combination of purposive and snowball selection (Kumar, 2011). Initial contact with the potential respondents was made by an e-mail containing the research question of the study, background information about the study and an explanation that the interview took place in a semi-structured and that the identity of the respondent will not be revealed.

Seven interviews with municipal planning practitioners were conducted. From those seven interviews, three interviews took place with municipalities that participate in the so-called 'Nu al Eenvoudig Beter'-programme. That programme consists of anticipation on the EPA by stimulating public and private actors to already start adopting the principles of the EPA in so-called pilots. The objective of the ‘Nu al Eenvoudig Beter’-programme is to come to best-practices to reduce the amount and/or complexity of rules and to show that even under the current spatial planning and environmental legislation there are possibilities to come to simpler decision-making procedures. The ‘Nu al Eenvoudig Beter’-programme is also a means to prepare tiers of government for the implementation of the EPA by enabling

participants in the programme to deviate from certain spatial planning and environmental laws and regulations, when that helps the participant to start working in the spirit of the EPA (Omgevingswet, 2014).

Interviews with non-municipal planning practitioners were conducted to analyse whether there are differences between the way the EPA is framed by planning practitioners at different tiers of government and whether public and private sector planning practitioners frame the EPA differently.

3.1.2 EPA

After having interviewed, transcribed and coded the interviews with planning practitioners, the parts of the explanatory memorandum accompanying the EPA about the themes enumerated below were collected and analysed:

- the rationale and objective of the EPA;
- analysis of the “issues” in the existing legislation the EPA is expected to solve;
- the vision of the minister of Infrastructure and the Environment radiating from the explanatory memorandum;
- the discretionary space provided to planning practitioners.

3.2 Data analysis

All interviews were recorded using a voice recorder subsequently transcribed. All interviews were conducted in Dutch. To stay as close as possible to the words spoken in the interview and to prevent additional interpretation by the researcher when translating from Dutch to English, all interviews were transcribed and analysed in Dutch.

Following Van Lieshout et al (2011), the interview transcripts and the relevant parts of the explanatory memorandum accompanying the EPA were repeatedly read, compared and coded. The coded parts were categorised and analysed using the framing literature discussed in the preceding chapter. As such, frames were generated inductively.

After coding the interview transcripts and parts of the explanatory memorandum, the coded documents were compared to each other. It has to be noted that during the interviews, respondents typically used more than one of the frame strategies elaborated on in section 2.1 and frame strategies were used in an intermingling way, the same applies to the texts of the draft version of the EPA. As Van Lieshout et al (2011) state, overlapping and conflicting frames point and the ability of a frame to make sense of the world. Frames relate to each other and creating too much division between different frames is only theoretical. Following Rinfret (2011), it is not the objective of this article to provide an extensive overview of all frames employed, but to explain how planning practitioners align or oppose frames in the draft version of the EPA.

4 What preceded the EPA

Spatial planning in the Netherlands is, Voogd and Woltjer (2010) state, closely tied with juridical principles, meaning that spatial developments only take place after extensive considerations and legal assessments. Nevertheless, these juridical principles have recently been subjected to reform guided by deregulation and so-called better regulation agendas to simplify the legislative system (Nilsson, 2011).

The Spatial Planning Act (WRO) of 1965, was the first separate Dutch spatial planning act (Buitelaar et al, 2011). With the New Spatial Planning Act (Wro) of 2008, that act was repealed (Van der Molen, 2015). Together with the Wro, the Expropriation Act was revised and also came into force in 2008 (Van Straalen et al, 2013). The New Spatial Planning Act of 2008 was developed as the result of a turn to a more market-based planning agenda. Also, that act was developed to reshuffle the powers and responsibilities of all tiers of government. Besides deregulating, the Wro granted new instruments and authorities to the provincial government to make spatial planning more efficient and effective, to improve coordination between different tiers of government and to facilitate spatial developments. By providing the provincial governments with new instruments and authorities, it was presumed that it would fortify the role of the provinces in spatial planning (Lloyd, 2015). However, provinces rarely use these instruments (Buitelaar et al, 2012).

Central to the Wro is the focus on decentralising and deregulating spatial planning (Van Straalen et al, 2013; Evers, 2015; Van der Molen, 2015). As demonstrated in the credo ‘locally when possible, centrally when necessary’ (the subsidiarity principle), by which it is attempted to distribute power to the governmental tiers closest to citizens in an attempt to make the role of the government not bigger than necessary (Van der Molen, 2015).

Van Straalen et al (2013) state that the decentralisation of spatial planning, both in terms of coordination and control, from the national government to lower tiers of government has also been codified in the National Policy Strategy for Infrastructure and Spatial Planning (In Dutch: Structuurvisie Infrastructuur en Ruimte) (Van Straalen et al, 2013). The content of the National Policy Strategy for Infrastructure and Spatial Planning is similar to its predecessor. The focus is still on integration, providing guidelines and working with broad planning horizons. It presents a withdrawal of central government authority that is intentionally presented as deregulation rather than decentralisation. This is due to financial considerations, decentralisation includes transition of budgets inherent to a task that is left to lower tiers of governments, whereas deregulation does not. When the national government decentralises a task to the provincial government it has to hand over the accompanying budget too. When a task is deregulated, the budget reserved for the execution of the task is not handed over to the provincial government and the national government can use that budget for other means (Van Straalen, 2014).

In the slipstream of the decentralised spatial planning approach as set out in the New Spatial Planning Act of 2008, the national government introduced a new means to enhance the efficiency of spatial planning (Van der Molen, 2015) and to deregulate (Gerrits et al, 2012). This means is called The Environmental Licensing (General Provisions) Act (in Dutch: Wet algemene bepalingen omgevingsrecht, Wabo), which is basically an all-in-one environmental permit replacing a myriad of permits and exemptions. The EPA is alleged to be a follow-up of this all-in-one-license (Van der Molen, 2015). An evaluation of the Wabo showed that it is does not function as an integral and flexible law for complex and commercial projects (Borgers et al, 2012). The Wabo might be aimed at deregulation, competent authorities however remain the authority to supplement general regulation with customised regulations, which seems to contradict the initial ambition to deregulate (Nilsson, 2011). It results in a system in which there is apparent deregulation at the level of a national law, but a chance at more regulation drawn up by lower tiers of government.

According to Driessen et al (2012, p.151), all the shifts above did not result in major changes to environmental governance, but resulted in the addition of alternative ways of governing that exist next to the ways of governing already in place. The existing mode of governing however remains centralistic with small-scale supplements in the form of the so-called "*decentralised*" and "*interactive*" governance. Driessen et al (2012) continue to argue that the main drivers of these changes have been the alleged lack of synergy and a trend propagating decentralisation.

Roodbol-Mekkes and Van den Brink (2015, p.192) claim that the rationale structuring the transition from the Spatial Planning Act of 1965 to the New Spatial Planning Act of 2008 revolves around two groups of "*catchphrases"*. The first group is about utterances like:

- *"closer to the citizen";*
- *"decentralisation";*
- employing the subsidiarity principle.

Nonetheless, the aphorisms enumerated above seem to revolve around the same subject. After all, decentralisation is achieved by employing the subsidiarity principle and decentralisation brings legislation 'automatically' "closer" to the citizen. To me, there thus is little distinction between these aphorisms. The second group of those "*catchphrases*" (Roodbol-Mekkes and Van den Brink, 2015, p.192) revolves around facilitating desired spatial developments rather than prohibiting or restricting less desired developments.

The foregoing elucidates that all major revisions of spatial planning and environmental law are based on comparable motto's (Roodbol-Mekkes and Van den Brink, 2015) and that all revisions of spatial planning and environmental law since 2008 focus on deregulation and speeding up development processes (Lloyd, 2015). These deregulatory tendencies come

from an ambition to decentralise to allegedly attune legislation better to local contexts and to stimulate development (De Roo et al, 2012). Dutch planning practitioners have thus been confronted with multiple deregulatory revisions. Nonetheless, Zuidema and De Roo (2015) claim it is senseless to pursue decentralisation without first assessing whether the local authorities that have to work with decentralised policies and laws can work with it. The analysis of Buitelaar et al (2012) also shows that new instruments provided to planning practitioners with the deregulatory revisions are sparsely used, meaning planning practitioners do not work with it. Given the above, the question arises what planning practitioners think of the umpteenth revision of the legislation they work with.

5 The EPA

In the EPA, the focus is on decentralisation, reducing the amount of issues the national government is responsible for and reducing the quantity of national regulations. Besides decentralisation, trust is an important component of the EPA (Omgevingswet, 2014), the starting point to leave as much decision- and rule-making to the municipal level is paired with the statement that municipalities need to have trust in the provincial and national government that these will not unnecessarily interfere with the municipal government (De Graaf, 2015).

Moreover, the meaning of the concept facilitating development is expanded to not restricting development (Roodbol-Mekkes and Van den Brink, 2015) and the regional level is not provided with a distinctly defined function (Omgevingswet, 2014; Roodbol-Mekkes and Van den Brink, 2015). Therefore, the development of the EPA differs from the development of the 2008 Spatial Planning Act because coordinative role of spatial planning and its comprehensive view on spatial development which sets the framework for all tiers of government are claimed to be abandoned (Roodbol-Mekkes and Van den Brink, 2015).

The alleged main objective of the EPA is to reduce the complexity of the legislative system governing spatial planning and environmental protection (Omgevingswet, 2014). In that explanatory memorandum, the current system of environmental and planning legislation is claimed to be (Omgevingswet, 2014):

- too dispersed and too complex and therefore lacking transparency;
- leading to slowly progressing decision-making procedures due to the complexity of the legislation;
- inhibiting growth aimed at sustainable development;
- inhibiting possibilities to find tailor-made solutions for specific projects that enhance the quality of the physical living environment;
- inhibiting early actor and stakeholder involvement in decision-making procedures;
- decreasing the possibility to develop integral policies.

The minister of Infrastructure and the Environment argues the system of environmental and spatial planning legislation is too complex due to (Omgevingswet, 2014):

- the sectoral organisation of environmental and spatial planning legislation;
- elements of the physical living environment increasingly becoming intertwined and the sectoral organisation of legislation mentioned above is not the best means to deal with this;
- the large amount of preparatory research that needs to be conducted to take a well-informed decision;
- the large amount of policies applicable to (elements of) the physical living environment.

Therefore, the minister presents the EPA as a means to come to more legislative coherence and to simplify decision-making procedures by integrating different laws and regulations (Omgevingswet, 2014). Moreover, the ambition to reduce the number of laws and remould legislation into four orders in council to make the system of environmental and planning legislation more predictable and easier to use (Omgevingswet, 2014), corroborates that the ambition to deregulate is manifest in the EPA.

The draft version of the EPA states that planning practitioners need to be provided with more discretionary space and stimuli to use to enable them to develop area-specific solutions. Also the EPA states that to enable developing area-specific solutions the regulation need to be based on open standards rather than detailed regulations. All this is done to come to a more flexible application of legislation (Omgevingswet, 2014).

In the explanatory memorandum of the draft version of the EPA, it is argued that there is a public demand simplify legislation and make it more predictable and that is a need to more quickly come to decisions about spatial developments. Adding to that are statements in the same explanatory memorandum that express that according to the minister of Infrastructure and the Environment citizens demand legislation that better empowers them to undertake spatial developments themselves (Omgevingswet, 2014).

Beijen et al (2012) state that Dutch spatial planning law is characterised by a sectoral organisation, stipulations regarding responsibilities, policy objectives and means to achieve those objectives are taken up in various parts of different laws and regulations. The statement by Beijen et al (2012) is acknowledged in the explanatory memorandum of the draft version of the EPA. In that memorandum it is also stated that this will not change since the existing division of tasks, responsibilities and authorities remains intact (Omgevingswet, 2014).

Countering the sectoral organisation of the system of environmental and spatial planning law to come to an integral approach to the physical living environment is an important objective of the EPA (Omgevingswet, 2014). In the EPA it is stated that there apparently is a lack of coherence. This is in line with Tops (2001) who stated that the prevailing idea in Dutch legislation is that the sectoral organisation of legislation is not good and more legislative coherence is the answer.

Besides reducing the complexity of the legislative system and making legislation easier to use the EPA frames changing the culture of spatial planning as an important issue (Omgevingswet, 2014). Elaborating on the acknowledgement in the EPA that the success of that act is for a substantial part determined by a change in organisational culture, Leinfelder (2015) argues that this is contradictory to the objective of reducing the amount

of rules. When a change in the attitude of civil servants and administrative executives is translated into law, this leads to more juridification, Leinfelder (2015) argues. This while juridification is perceived as one of the biggest impediments for decision-making procedures (Omgevingswet, 2014). According to Leinfelder (2015) this testifies of a belief in the manageable society, both in the substantive and the procedural dimensions of spatial planning.

6 Frames in the EPA

Based on the preceding chapter, the frames elucidated below have been identified in the draft version of the EPA.

Trust

Pages 45 until 48 of the explanatory memorandum accompanying the draft version of the EPA contain an elaboration on trust. These pages contain statements on trust between initiators of developments, trust in the government and trust between tiers of government and frame trust as an important issue in the EPA, these statements are understood as building blocks of the trust frame.

Decentralisation

The decentralisation frame resides in the parts of the EPA that concern the employment of the subsidiarity principle, developing legislation that is attuned to the tiers of government that know best how to deal with an issue and the ambition to bring legislation as close to the citizens as possible.

Deregulation

In line with Munthe-Kaas (2015) facilitating desired developments is here also defined as a manifestation of deregulation. Deregulation is in this study also defined as present in ambitions to reduce the number of laws and regulations to simplify spatial planning and environmental law.

Integration

The EPA propagates the development of an integral and coherent approach to all parts of the physical living environment. This frame is manifest in statements that are about expanding the existing zoning plan to a plan that contains regulations concerning all aspects of the physical living environment. Additionally, this frame resides in statements on making legislation more coherent and better equipped to deal with complex issues.

Flexibility

Another frame that is in this study understood to be present in the draft version of the EPA is a frame focusing on making legislation more flexible by providing planning practitioners with more discretionary space and working with more open standards instead of detailed standards and norms to balance interests against each other.

Meeting public demands

Yet another frame in the draft version of the EPA revolves around statements that stipulate that legislation needs to better match contemporary society by among others developing more horizontal relations between actors. Another statement in this frame is that legislation

needs to adhere to the wishes of citizens and these legislation should stimulate and facilitate citizen empowerment. Statements on making legislation simpler and more predictable, because this is apparently demand by the public are also understood to be part of this frame.

Changing culture

Changing the culture of spatial planning practice is another frame present in the draft version of the EPA. This frame revolves around statements that urge planning practitioners to adopt the principles of the EPA and is therefore here understood as a kind of meta-frame because it encompasses (parts of) the other frames.

Given these frames, the EPA links up with the 'Big Society' discourse in the United Kingdom which focuses on empowering local actors and communities to strengthen the accountability of the local government (Buser, 2013; Pearce, 2013). Besides empowering local communities, the Big Society discourse focuses on opening up public services to let them compete to offer high quality services and on encouraging people to play a more active role in society by for instance taking up a voluntary work. Central to the idea of the Big Society was also the redistribution of power from the national government to lower tiers of government to reduce bureaucratic burdens on society and stimulate communities to things their way (Buser, 2013). Critics of the Big Society argue it is badly performed window dressing of an attempt to reduce the influence of the government and let communities who do not have the abilities to do so, manage themselves (Pearce, 2013). Also, decentralising and devolving power to lower tiers of government, as is done under the Big Society discourse receives scepticism and incites mistrust and frustration (Ludwig and Ludwig, 2014). Boelens and De Roo (2014) argue that the Big Society in the United Kingdom and the ambition to decentralise and deregulate planning in the Netherlands all allegedly focus on making spatial planning more open and self-organised and thus have the same objective.

7 Frames of planning practitioners

This chapter elucidates how planning practitioners react to the frames identified in chapter six. All translations of the statements in the EPA and by planning practitioners from Dutch to English are mine.

7.1 Trust and decentralisation

The starting point of the EPA is to leave as much decision-making to the municipal level on the basis of trust (Omgevingswet, 2014; De Graaf, 2015). With regard to this decentralisation, planning practitioner 14 remarks: *"I do not believe one can be against the idea that a consideration is made at the most appropriate level. Only the question is what the most appropriate level is."* This planning practitioner frames decentralisation as a good principle, but also as a principle that is conceptually difficult because it requires determining the appropriate governmental level for each issue. This framing finds wide resonance within the group of planning practitioners consulted for this research, planning practitioner 10 for instance notes: "*[T]he law has a system vision and a substantive vision, the latter is still to come. (…) And to me the system vision is to decentralise everything that can be decentralised and that seems fine to me. But the translation of it to practice is still an important issue."* Planning practitioner 10 also frames decentralisation as a concept that is good, but has not (yet) been given substantiation in the EPA.

The three pages on trust in the explanatory memorandum of the EPA (see chapter 5) mentioned before are preceded by this statement expressing that the national and provincial government retain the authority to overrule lower tiers of governments:

"*During the realisation of projects by the government and the provinces, sometimes conflicting duties and interests can be encountered. To deal with those conflicts, they have the power to overrule. This allows them to ignore policy philosophies of other tiers of government and restrictive decentral rules.*" (Omgevingswet, 2014a, p.45).

Trust might be claimed to be an important subject, but the statement on authority frames trust as a bit useless, since it can easily be overruled when the national or provincial government deem it necessary. Additionally, page 47 of the explanatory memorandum contains a statement expressing that the objective of augmenting the trust civilians have in the government is to smoothen decision-making procedures (Omgevingswet, 2014). In my understanding that statement expresses that augmenting trust needs to reduce the amount of formal appeal procedures, which radiates the notion that enhancing trust is a strategy of a government aiming to limit appeal against its decisions.

The planning practitioners consulted during this study state that it is a charming idea to base a law on trust and leave as much decision-making to the municipal level, but doubt whether the ambition will become reality. Planning practitioner 13 expresses this doubt like this:

"*My doubt concerns whether the State actually has the guts to let go. It will not be the first time that the parliament does not dare to let go, or that when the State dares to let go the province starts to intervene with all kinds of new rules. (…) Ultimately, the trust the national government has in the lower tiers of government is not very large.*"

This frame is employed by multiple planning practitioners consulted during this study and is typically informed with parallels with the decentralisation in the social domain. In this statement, the ambition to decentralise decision-making to the municipal level is framed as having occurred and failed multiple times, thus evoking scepticism about the feasibility of this resuscitated ambition. The trust of the national government in lower tiers of government is furthermore framed as limited, again evoking scepticism about this ambition.

The planning practitioners consulted for this study response to the statement on page 45 of the draft version of the explanatory memorandum by framing the EPA as a means to free the national government from spatial planning responsibilities while simultaneously retaining control by overriding lower tiers of government when necessary. Planning practitioner 6 expresses it like this:

"[R]esponsibility is written with capitals in the EPA and then I think, at the moment I am made responsible for something I also must have the authority. And that is lacking, that authority. Because the higher tiers of government can intervene easily. And that is anathema to lower tiers of government."

This statement expresses that lower tiers of government are made responsible for spatial planning without having the necessary authorities to steer. When this is combined with the ambition in the EPA to decentralise as much as possible, the impression emerges that the lower tiers of government are predominantly destined to perform spatial planning tasks, so the national government does not have to perform these tasks. But when the national government needs to overrule lower tiers of government, it can easily been done.

7.2 Deregulation

Responding to the question what the incentive for the development of the EPA was, planning practitioner 14 claims it was the Crisis and recovery act and with that expresses the idea of most planning practitioners consulted for this study. Planning practitioner 14 implicitly argues that the Crisis and recovery act provided the incentive to deregulate spatial planning even further because it showed that a substantial amount of regulation governing the physical living environment can be deregulated. As such, the Crisis and recovery act provided a push to reform spatial planning and environmental legislation, which has resulted in the draft version of the EPA. Planning practitioner 14 actually states the following: *"Well, the Crisis and recovery act deregulated a lot in a very short time. There have been law reforms aimed at deregulation before the Crisis and recovery act, but with that act showed that deregulation can be drawn wide."*

Elaborating on spatial planning practice in the Netherlands, planning practitioner 16 notes: *"[T]the EPA actually propagates deregulation, but my experience is that all previous legislative reforms aimed at deregulation have resulted in more rules*." This practitioner frames the attempts of the government to deregulate spatial planning as having resulted in reregulation. By framing this alleged deregulation as reregulation, this planning practitioner opposes the frame in the EPA. Saliently, the most experienced planning practitioners consulted for this study all frame the deregulatory ambitions as leading to reregulation.

In the explanatory memorandum of the EPA that law is framed as codifying the transition from a spatial planning focused on developments that are explicitly allowed to a spatial planning focused on projects that contribute to the quality of the physical living environment unless they are explicitly prohibited. Apart from being framed as a transition or even paradigm shift, this development apparently constitutes civil servants that think along with initiators and take facilitating rather than assessing developments as a starting point (Omgevingswet, 2014). The latter is typified as deregulation by Munthe-Kaas (2015).

Especially the planning practitioners participating 'Nu al Eenvoudig Beter'-programme and thus have a distinct spatial planning 'issue' that cannot be solved under the existing spatial planning and environmental legislation, but that can be solved under the EPA adhere to the framing above and frame the existing laws and regulations as "*the current instruments are not equipped to deal with invitational spatial planning because it stipulates proving that a development is feasible.*" This statement by planning practitioner 4 frames the EPA as better equipped to deal with long term spatial development based on inviting initiatives. This statement however seems a bit premature because the way the EPA will deal with this alleged paradigm shift is substantiated in the orders in council, which will be published in April 2016.

Planning practitioners that are not involved in the 'Nu al Eenvoudig Beter'-programme frame development by inviting spatial initiatives in a more critical way. As does planning practitioner 14:

"I think that if one wants to conduct spatial planning by inviting development initiatives, one needs to set prerequisites. One does not want to invite everyone to the party. So that is still a restricted form of spatial planning [where initiators ask permission to participate in the project, DH]. (…) So I do not see much difference".

This statement frames spatial planning by 'invitation' as a process in which the government still has to assess who will be invited and which initiative will be taken up in the spatial development. Which implies that there is not much difference with 'classic' spatial planning in which initiatives are assessed by the government before being permitted. As such, this statement frames the two types of planning as comparable.

7.3 Integration

In the explanatory memorandum of the EPA, it is stated that one of the objectives of that act is to come to more coherent and even integral legislation for coordinating developments in the physical living environment (Omgevingswet, 2014). The planning practitioners consulted for this study adhere to the argument of the minister of Infrastructure and the Environment to make spatial planning and environmental legislation more coherent and integral, but are critical towards that ambition at the same time. As for instance planning practitioner 8:

"I had hoped that with the EPA one would be provided with a kind of framework for balancing aspects, not one within sectoral aspects, as it looks now. (…) [But a kind of] framework for balancing societal interests in an integral way. (…) The EPA is not an integrated act because one is not allowed to come to an integral balancing of aspects, it remains a sum of aspects weighed differently. (…) To me, that is a major shortcoming of this law. One could have been truly innovative and that would have been ground-breaking, but that would have required a different way of thinking."

This framing expresses that the EPA will not introduce new methods to enable integration, it is (in this frame) a continuation of the 'thinking' about integration in the existing environment and spatial planning legislation. Planning practitioner 17 states the following about integral considerations:

"*By creating a tool for balancing different aspects, one can create a certain type of integration. And that is threatening because who are you or who am I to say a certain aspect can be balanced against an other, one actually says a certain aspect is more important*

than an other. (…) If you want to explain that all sectoral interests and norms are assessed equally, I say it is impossible, there will always be a sequence and a hierarchy."

This planning practitioner frames the idea of integration as potentially threatening to decision-makers, because an administrative body needs to cut ties and has to make clear which aspect prevails over other aspects and under which circumstances. This respondent expresses the idea held by many planning practitioners consulted for this study that aspects and interests cannot be equal and that therefore balancing aspects and interests in an integral way is not possible.

With regard to integration, planning practitioner 8 states that integrating various aspects with each other is problematic because if "*people working at [different administrative departments, DH] become involved with things one does not want to [address in a plan, DH] and that can be prohibitive.*" This idea is shared widely among the planning practitioners consulted during this study.

The EPA needs to enable planning practitioners to include all aspects that constitute the physical living environment in plans. To do this the zoning plan in which only spatially relevant matters can be taken up is expanded to a plan in which all matters constituting the physical living environment, the so-called environment plan (in Dutch: omgevingsplan) (Omgevingswet, 2014). Informed by their experiences with spatial planning, the planning practitioners consulted in this study frame the environment plan as not leading to considerable changes because to them the principles on which it is based remain equal to the principles the zoning plan is based on. Elaborating the expectance that the EPA and more specifically, the environment plan will not lead to considerable changes, planning practitioner 1 utters: "*It is possible to make an environment plan as if it were a zoning plan, you know. One does throw in aspects like environmental protection, spatial quality, so to speak and one is done.*" On a more abstract level, planning practitioner 16 expresses that even the implementation of the EPA will not lead to considerable changes in spatial planning practice. This planning practitioner frames planning practitioners as already being used to integrating different aspects, for instance in the current zoning plan and that therefore nothing changes and with that expresses the perception held by all planning practitioners consulted for this study. The statement of planning practitioner 16 goes like this: "*Well, in a very simple sense, Are we [planning practitioners, DH] going to conduct spatial planning in another way? Are the Netherlands going to look differently when the EPA has come into force? (…) Well, I am sceptical about that.*"

7.4 Flexibility

Page 39 of the explanatory memorandum of the EPA states that: "*Administrative agencies are expected to consider the various interests involved in initiatives and projects and to provide those interests a fully-fledged place in decision-making procedures. During the balancing of interests, administrative agencies are provided with discretionary space. (…) In this way, the legislative system and the framework for decision-making based on that legislative system enable a flexible application of spatial planning and environmental legislation.*" (Omgevingswet, 2014, p.39).

Page 12 of the same explanatory memorandum notes that: "*To be able to take into account regional and local needs, differentiation, custom-made solutions and innovation are required. Laws and regulations however are still characterised by a generic approach and uniform coordination by the national government.*" (Omgevingswet, 2014, p.12).

Four pages on, the following statement is to be found: "*Because recent years have seen an increase in the amount of policies and legislation, the complexity [of the spatial planning system, DH] increases.*" (Omgevingswet, 2014, p.16). These statements frame the EPA as reducing the amount of rules and enabling more discretionary space.

The planning practitioners consulted for this study adhere to the idea of reducing the amount of (obsolete) rules and increasing discretionary space, but doubt the feasibility of those ambitions. Planning practitioner 8 for instance states: "*If something at someplace goes wrong, it results in no time in new legislation. (…) So the open standards and reduction of norms are countered.*" With this statement, that is prevalent among the planning practitioners consulted for this study, the deregulatory ambitions in the EPA are again framed as quickly leading to reregulation.

Just as the inclusion of new aspects into the existing zoning plan is not expected to lead to a new and better spatial planning practice, because the more-or-less integral character actually is a complicating factor (see paragraph 5.4.1), discretionary space is expected to lead to more rules. As planning practitioner 6 expresses: "*Look, less rules will make things easier, in principle, but it depends on how the administrative court reacts to it. (…) At the moment the administrative court does not acknowledge local discretionary space [and starts making its own norms], one is back where one started.*" Planning practitioner 17 states:

"*[M]y fear is that if a lot is devolved to local discretion, which sounds really [logical], flexible, low profile and close to the public, because it is, so to say, possible to use a different standard for rural areas than for the city centre, (…) the same profoundness of the current legislation has to be organised at the local level. That is going to fail, I believe. Because*

that is too diffuse, political and too difficult. (…) And if my fear becomes reality, than I presume the administrative court will not be held back from developing standards based on jurisprudence and that will lead to case law. And [that] is bad, (…) [b]ecause everything is casuistic and one cannot predict how things will be assessed."

In the statement above, the idea of an area-specific approach is framed as a logical concept, but one that is difficult to substantiate. In this sense the ambitions to decentralise and come to an area-specific approach are similar. Planning practitioner 17 also notes that:

"*[I]n the current situation, one can hide behind probing legislation. It is difficult legislation, but it is clear. The opportunity to hide is taken away with the EPA, so you have to motivate. Motivating choices is really treacherous, because it means one can read how one thinks it is. (…) Well one may consider it to be the same situation, somebody else might have a different opinion. And that is a slippery slope.*"

The context in which planning practitioner 17 has uttered the statement about motivating choices is an elaboration on the consequences of motivating choices and the possibilities that such motivations are annulled. The possible annulment of a motivation declares why motivating choices is framed as "***treacherous***". This frame is supplemented by a statement from planning practitioner 15 who states: "*Frankly, I think that administrative executives will not make much use of discretionary space because they fear they cannot justify its use sufficiently to stakeholders.*" This frames the chance that discretionary space is not used as large because of the chance of the usage being annulled in court or the risk that it leads to legal inequality (which of course might also result in annulment in court). The planning practitioners consulted for this study typically employ at least one of these two sceptic framings of the use of discretionary space.

The statements in this section represent the ideas held by the planning practitioners consulted during this study, that the idea of reducing the amount of rules, increasing discretionary space and leaving more to the lowest possible tier of government in principle sounds good, but leads to problems. The planning practitioners oppose the positive framing of reducing the amount of rules, increasing discretionary space and leaving more to the lowest possible tier of government by focusing on the problematic aspects. Those problems consist of the shirking of responsibilities from the national government to lower tiers of government, the emergence of case law. According to the private sector planning practitioners consulted in this study, this will make (their) planning practice more difficult.

7.5 Meeting public demands

7.5.1 Stabilising expectations

Planning practitioner 17 who is a proponent of the EPA but one that is also critical towards it states (when speaking critically about the EPA) the following about the existing legislative system: "*The current system might be tangled, sectoral, complex and leading to slowly proceeding decision-making procedures. But simultaneously it works for decades and it is strangely enough also clear.*" With this statement, the current system of environmental and spatial planning law is framed as inflexible but clear in the sense that the legislative system stabilises expectations and limits risks. In this sense the current environmental and spatial planning law is framed to only impede high-profile and special developments and the EPA is framed as a system that might not work and is less clear than the current legislative system. This positive framing of the current environmental and spatial planning law prevails among the planning practitioners consulted for this study that have juridical background.

7.5.2 Problem statement

The planning practitioners, be it proponents or opponents of the EPA, consulted during this study all adhere to the framing in the EPA that current spatial planning and environmental law are scattered over a multitude of laws and regulations which makes working with the legislation complex. Planning practitioner 17 for instance frames the vision and objective(s) of the EPA as so good, it would even be strange if one would be against it:

"*The vision and objectives [of the act, DH] they are very good, we should really try to achieve them. We also should not interfere with them. (…) The objective, one cannot be against it. That is useful to everyone. But whether we are able to achieve that objective remains to be seen because then we have to make choices about roles, about responsibilities. Until now the choice has been made to not do this properly, (…) all those choices have been pushed to later stages of the legislative process."*

Notwithstanding framing the vision and the objectives as so good that planning practitioner 17 cannot imagine the very idea of someone not adhering to the vision and objectives, this practitioner also frames the EPA in a more critical way. Planning practitioner 17 is of opinion that the EPA in its current form is not sufficiently substantiated and many important decision are pushed to later stages in the law making. Moreover, this more critical framing also express the widely held belief under the planning practitioners consulted for this study that the vision and objective of the EPA are good but are also so ambitious and abstract that it is doubtful whether they will lead to positive change in the spatial planning system.

Furthermore, planning practitioner 6 states: *"[I]t has become a (…) kind of dinosaur. It no longer matches the current era, or my personal opinion. (…) [I]t does not fit in my ideas concerning shared responsibility. It does not fit my ideas about individual responsibilities,*

it does not fit anything anymore. It has become completely obsolete." Besides stating that the current environmental and spatial planning legislation has become obsolete, planning practitioner 6 also states that: "*it has had its merits, no doubt about that. But one must see that it is rapidly being overtaken by time and that correlates with both the economic recession and a changing conception of what the government needs to do and needs to be.*" This finds nearly exact concordance with what is stated on among others pages 9, 12 and 19 of the explanatory memorandum of the EPA that frame the existing environmental and spatial planning legislation as having been of relevance and as having resulted in sound environmental protection, but apparently no longer match the needs of the current era.

The other planning practitioners consulted for this research, align with the frame similarly. However, their alignment is not always as convinced as that of the planning practitioner shown here and expresses a more critical stance towards the framing of the problematic complexity. Planning practitioner 14 adheres to the attempt to make legislation more uniform and agrees that environmental and spatial planning legislation are complex, but sees that as a trait of the living environment and states:

"*[T]hat everything can be integrated, or that there is a problem with [not integrated legislation, DH], I doubt that. And that is also connected to the problem statement that Eenvoudig Beter (ministerial department responsible for the development of the EPA, DH) uses, because I do not consider it to be really clear in the sense of what the problem actually is. Yes, it is complex and it is sectoral. Is our legislation complex or is our living environment complex? I think the latter is the case.*"

Besides considering complexity as a trait, this respondent perceives the problem statement substantiating the EPA as unclear.

7.5.3 The emergence of regulation

In paragraph 7.5.1, the ambition of the minister of Infrastructure and the Environment to use the EPA to make environmental and spatial planning legislation less complex, more coherent and reduce the amount of obsolete rules is framed positively by the planning practitioners consulted for this study. But what has resulted in the allegedly complex, incoherent and sometimes obsolete legislation in the first place? Planning practitioner 11 notes: "*it used to be spatial planning law and that has been supplemented with environmental law*". With this statement, the increased complexity of the current system of spatial planning and environmental law is linked to the emergence of environmental regulations. This statements frames the complexity of the legislation as predominantly the result of environmental legislation and not so much of spatial planning legislation. Nonetheless planning practitioner 13 notes that: "*I do believe that we generally have too*

much and contradictory rules. (…) [I] do believe that it is possible to repeal regulations, but the question is what do we lose if we repeal too much? Therefore it is important to find a balance between deregulation and regulation." Planning practitioner 13 thus acknowledges that it is utterly important to find a balance between reducing the amount of rules and maintaining the rules that are of relevance and with that expresses quite clearly the framing of the planning practitioners consulted for this study.

7.6 Changing culture

The explanatory memorandum accompanying the EPA recognises that "*the quality of a decision-making procedure is predominantly determined by the management style and organisational culture of the administrative body taking the decisions"* (Omgevingswet, 2014, p.277). The planning practitioners consulted for this study adopt this frame, planning practitioner 9 for instance states that: "*The EPA is a framework and the way that framework is filled in depends on culture.*" Planning practitioner 8 subsequently states that "*it is impossible to capture culture in legislation, so the most important change does not reside in the law"*. Planning practitioner 3 states that "*[i]t (…) provides an opportunity to come to integral considerations, but making those integral considerations lies in the people and not in the law. And that is where the challenge is.*" All these utterances frame culture as an important subject, but also as one that is difficult to influence. In the next paragraph planning practitioner 2 states this very clearly.

Planning practitioner 2 who works for the ministry making the EPA states: "*it is a real important success factor that we do not have much influence on.*" This is interesting because the EPA describes that the extent to which the ambitions to decentralise and deregulate can be achieved depends to a large extent on the shift in spatial planning culture the EPA can bring about (Omgevingswet, 2014). The success of decentralisation and deregulation is thus framed as something the law makers do not have much influence on. Planning practitioner 10 utters: "*A culture change has effect when people are intrinsically motived to adopt change and that is the difficult part of the EPA. In principle the change in culture is good, but to me it is a bit naïve."* This planning practitioner also frames the change in culture as something that is difficult to influence because it depends on an intrinsic motivation and as something that evokes high hopes and that it is a bit naïve to expect these hopes will be realised. The latter part of the statement by planning practitioner 10 finds agreement among the other planning practitioners consulted for this study.

Lastly, planning practitioner 14 states the change in culture the EPA propagates as a bit of a fad because according to this practitioner the change in culture can also be brought about under the current spatial planning and environmental legislation. In the statement below the culture change is framed as the most important part of the EPA which evokes questions about the necessity of the EPA because it is thought to be able to bring it about under the

current legislation. This framing is predominantly employed by younger and private sector planning practitioners that already try to work as deliberatively, flexible and integrated as possible within the confinement of the current legislation. Planning practitioner 14 states:

"*It all comes down to the change in culture, but one has to wonder whether the EPA is necessary to bring that change about or whether the change in itself is sufficient. Because the change in culture is about deliberation between actors, facilitating rather than restricting developments, augmenting stakeholder involvement. I do not see why that would not be allowed under the current legislation.*"

8 Discussion

This chapter places the findings as described in the previous chapter in the context of other studies to the EPA, comparable law reform cases and other academic studies.

8.1 Wickedness

Planning practitioners are confronted with wicked problems that are not solved easily (Hartmann, 2012; Rae and Wong, 2012). Framing wicked problems as the result of the sectoral organisation of the legislative system (Omgevingswet, 2014), expresses the frustration the minister of Infrastructure and the Environment apparently experiences when trying to control planning practice. By means of integral and coherent legislation, that minister desires to regain grip on spatial planning practice (Omgevingswet, 2014). The ambition to eradicate the alleged sectoral organisation of the system of spatial planning and environmental law seems fuelled by a quest for control. Biesbroek et al (2014, p.8) and typify integration as a "*consensus frame*" that often contain multiple and differing frames about integration that diverge further as implementation progresses. That a consensus frame holds slumbering frames is also acknowledged by Candel et al (2014). Biesbroek et al (2014) also state that a sectoral organisation of legislation is not necessarily problematic (it testifies of different interests in and perspectives on complex issues) as long as the profile and identity of the parties involved are recognised.

8.2 Trust versus control

Tonnaer (2014) found that the explanatory memorandum of the EPA features a distinct government centric perspective. Tonnaer (2014) argues for more citizen involvement and a more 'open mind' of the legislator and posits that the explanatory memorandum accompanying the EPA testifies that the competent authorities are predominantly active in the first and the last stages of planning processes. Especially in the midst of that process, freedom is left to citizens, societal organisations and enterprises. Tonnaer (2014) goes on to argue that the role of those authorities in the first and last stages of the planning process should change too. In the first stage, they should focus on getting citizens really involved in the development of policies. During the last stages, the competent authorities should focus on stimulating horizontal forms of supervision and monitoring to come to a collaborative structure for sharing leadership (Tonnaer, 2014).

The explanatory memorandum of the EPA states that the current division of responsibilities between different tiers of government will not be changed and that the national and provincial government retain the ability to overrule lower tiers of government. Additionally, the explanatory memorandum states that the government can order lower tiers of government to make policies for certain topics (Omgevingswet, 2014). This to me evokes the impression of a hierarchical division of responsibilities in which the national government

retains central control. In the explanatory memorandum accompanying the EPA it is however also acknowledged that there is a mutual dependence between public and private actors (Omgevingswet, 2014). A mutual dependence implies that the national government cannot hierarchically impose (policy) objectives and base cooperation with other public and private actors on hierarchical ideas (Van Ark, 2005).

Van Ark (2005) goes on to argue that most governments are not aware of their own position within the societal context or the limitations inherent to that position. These limitations are the result of interdependencies on other public and private actors (Van Ark, 2005). Acknowledging these interdependencies as done in the explanatory memorandum of the EPA (Omgevingswet, 2014), is one step but it is not sufficient. The limitation of citizen involvement to the middle phases of a decision-making process and the government-centric perspective from which the explanatory memorandum is written (Tonnaer, 2014) indicate that the lesson that cooperation between public and private actors based on hierarchical governmental coordination does not work (Van Ark, 2005) is not remembered easily.

8.3 No changes in spatial planning practice

The argument that it is not so much the legislation itself that is complex but the physical living environment which leads to complex legislation to properly govern the physical living environment (see section 7.5), resembles a conclusion of Gunningham (2009) that governments seem to be more focused on political and economic punchlines and rhetoric than on decision-making. The complexity of policies and laws and ways to develop an optimal policy mix are not taken in consideration in favour of the claim that regulation is bad and that deregulation is inherently good.

Section 7.3 describes the expectance of planning practitioners that nothing much will change as a result of the transition from zoning plan to environment plan and that the environment plan will be a zoning plan with a few added themes. Leinfelder (2015) comes to a similar observation and argues that the transition from spatial planning to environmental planning provides more opportunities and momentum to change spatial planning and the planning discourse than are currently utilised by the ministry of Infrastructure and the Environment. Leinfelder (2015) goes on to argue that this incomplete utilisation of opportunities to change the spatial planning system and discourse is symptomatic for the inertia of the existing spatial planning system. When searching for possibilities to improve the working of the planning system, the focus is first and foremost on system improvement (efficiency gains) because the (perceived) social costs of a complete system revision are too high compared to the (perceived) societal costs of dysfunctional system elements. Solutions are predominantly sought within the confinements of the existing system and regime and radical solutions are as much as

possible not taken into consideration (Leinfelder, 2015). Leinfelder's (2015) argument finds concordance with the arguments of the planning practitioners consulted for this research, that the Environment and Planning will not lead to considerable changes to spatial planning practice for them and that the reasons why that act should lead to considerable changes are not substantiated. The motto of the EPA is "simply better" (Omgevingswet, 2014) and in the current EPA the 'better'-part of the EPA seems to mainly concern the procedural aspect of spatial planning. The planning practitioners consulted for this study frame the 'simply better'-question as not being answered from a substantive perspective, because the EPA and the explanatory memorandum only regulate responsibilities, instruments and procedures and therefore evokes the impression that it is mainly about procedural streamlining. The substantive norms will be dealt with in the orders in council that will be published in April 2016. The foregoing finds concordance with the parts of the study about decentralisation and integration, those are framed by the planning practitioners as good but not yet substantiated principles.

Related to the point above is a point associated with the shift to a more integrated spatial planning. The direct predecessor of the EPA is the Spatial Planning Act of 2008 (Wet ruimtelijke ordening). The objective of the Spatial Planning Act of 2008 is to come to 'good spatial planning' by taking into account all spatially relevant aspects of a project. As such, the Spatial Planning Act promotes working in an integral way (Van Buuren et al, 2010). Moreover, the existing Dutch spatial planning and environmental legislation is already quite flexible, making a lot of developments possible (Buitelaar and Sorel, 2010; Janssen-Jansen and Woltjer, 2010; Muñoz Gielen and Tasan-Kok, 2010; Buitelaar et al, 2011) and practice seems to be more flexible than thought by many (Buitelaar and Sorel, 2010). Leinfelder (2015) draws attention to the change from spatial planning (ruimtelijke ordening) to environment (omgeving) and states that it is symptomatic for the current political aversion of administratively constraining development initiatives. Spatial planning, Leinfelder, (2015) argues, is associated by too many actors with too much attention for laws and regulations, obstruction and constraining freedom. Whereas the term 'environment' is relatively new and unburdened. Leinfelder (2015) claims that this shift in vocabulary is rooted in a dissatisfaction among actors about the strong procedural emphasis currently put on spatial planning rather than in a substantiation of why a shift from a spatial planning to an environment approach is actually of added value. The shift comes about by first focusing on changing procedures and afterwards on focusing on the content of the policies. Given the focus on searching efficiency gains to improve the system of environmental and spatial planning legislation rather than overhaul that system and built a complete new one (Leinfelder, 2015), the implications of the EPA for planning practice are currently thought to be relatively small. This notwithstanding the framing in the EPA expressing that it is a complete overhaul of the legislative system. The consulted planning practitioners confirm

this, they neither think the EPA will lead to a complete new way of spatial planning or a completely different spatial planning culture.

From the paragraphs above it follows that the EPA concerns mainly a rhetorical shift from spatial planning to environment where the latter becomes the new punchline in order to avoid the emphasis on procedures spatial planning is allegedly associated with. This rhetorical shift is then presented as a complete overhaul of spatial planning and environmental legislation by the minister of Infrastructure and the Environment while the planning practitioners consulted for this study do not expect considerable changes as a result of that shift.

8.4 Deregulation and the zoning plan

Section 7.3 describes that under the EPA, it will be possible to make a zoning plan that is applicable to all aspects of the physical living environment. Røsnes (2005) points at a similar case in Norwegian planning history and argues that in such cases the formal parts of the planning system provide legal opportunities to come to new approaches. It remains to be seen, according to Røsnes (2005) whether such a new approach has been introduced to improve the formal system for the benefit of local authorities or whether it has been introduced to reduce the regulatory burden on local authorities. Røsnes (2005) states it is particularly the latter instance that serves as a justification for using new approaches (drawing up environment plans), which testifies of a tendency to deregulate. The planning practitioners consulted for this however do not frame the possibility to draw up an environment plan as a manifestation of deregulation.

8.4 Decentralisation and an area-specific approach

This study among others argues that decentralisation is one of the prime objectives of the EPA (Omgevingswet, 2014) and that the planning practitioners consulted during this study do not really expect much from this decentralisation. Notwithstanding the ambition to decentralise, page 45 of the explanatory memorandum contains a statement expressing that the national and provincial government have the authority to overrule lower tiers of government (Omgevingswet, 2014). The planning practitioners consulted during this study expect that this authority will be used a lot because they frame the trust the national and provincial government in lower tiers of government as limited. In the current form of the EPA, it remains unclear what tasks will be decentralised and when the national/provincial government will overrule lower tiers of government (Omgevingswet, 2014). The EPA also contains the ambition to come to an area-specific approach to projects (Omgevingswet, 2014), which implies that contextualised rather than generalised rules have to structure decision-making. Apart from the question whether this approach is feasible and how it will work out, it might be an explanation as to why no content is (yet) given to decentralisation and overruling. After all, if decisions are to be based on an area-specific approach, this also

applies to decentralisation and overruling. In this understanding, what is to be decentralised and overruled is based on the specificities of the project. Nonetheless, not substantiating what to decentralise and overrule might result in unpredictable and rather opportunistic behaviour of the national and provincial government at the expense of the lower tiers of government.

9 Conclusion

This chapter answers the research question, explains the contribution of the research to the debate about the EPA, describes the limitations of the research and describes suggestions for further research.

9.1 Results

The study had set out to identify what planning practitioners expect of the EPA by analysing what frames in the EPA they align and oppose with. Frame alignment takes with regard to the problem statement in the EPA which states that environmental and spatial planning law is scattered over a myriad of legislation and legislation is organised in a sectoral way. Frame alignment also takes place with regard to the vision and objectives of the EPA, these vision and objectives are however also framed as abstract and lacking substantiation which makes them difficult to achieve.

One of the ambitions of the EPA is to reduce the amount of (obsolete) spatial planning and environmental regulations. The planning practitioners consulted for this study adhere to this ambition and frame it positively. On a more critical note, they however also frame this deregulation as leading to reregulation. Also in a more general sense, the idea to use the EPA to deregulate spatial planning practice is framed by the (most experienced) planning practitioners consulted for this study as leading to reregulation. This oppositional framing of deregulation by the planning practitioners is infused with previous revisions of spatial planning and environmental law. Deregulation is also framed as leading to case law which makes planning practice less clear and leads to more juridification. This oppositional framing is especially employed by private sector planners.

Besides deregulation, other important building blocks of the EPA are decentralisation, building a spatial planning culture based on trust and propagating a spatial planning that takes the specificities of the development areas as a starting point (Omgevingswet, 2014). The planning practitioners consulted for this study frame decentralisation as a logical concept because it implies that decisions are taken by the tier of government that knows best how to deal with an issue. But the planning practitioners also frame decentralisation as a concept that is not yet sufficiently substantiated in the EPA.

The notion of building a planning culture based on trust appeals to the planning practitioners consulted for this study, but they also frame this idea as utopic. Notwithstanding the framing of trust as important in the EPA, the draft version of that law still contains considerable opportunities to overrule lower tiers of government (Omgevingswet, 2014). Among planning practitioners this evokes the impression that trust is used to smoothen decision-making procedures (decrease appeal procedures) in favour

of the government and not so much as something that needs to permeate decision-making procedures in all possible ways. Planning practitioners thus frame it as a way to free the national government of spatial planning responsibilities while still being able to overrule lower tiers of government when things do not go as planned by the national government.

The area-specific approach as propagated by the EPA is framed positively by the planning practitioners consulted for this study, but also as difficult to achieve, because it requires more motivation both towards the court in case of an appeal and to stakeholders. The planning practitioners consulted for this study frame this increased importance of motivation as leading decision-makers away from using the area-specific approach.

When the above arguments are combined, the notion emerges that these core elements of the EPA are all framed as not sufficiently substantiated and/or as difficult to achieve in practice. This frames spatial planning practice as having its own ways that are not so much influenced by a law. These frames in the EPA are to a certain extent opposed by the planning practitioners consulted for this study, but more importantly they are sceptically nuanced by them.

The ideas to make more use of open norms and provide planning practitioners with more discretionary space (to come to the area-specific approach described above) (Omgevingswet, 2014), are also framed as presumably being countered by planning practice. The EPA states that providing planning practitioners with more discretionary space requires a new role of the government (Omgevingswet, 2014). Again informed by former experiences, the planning practitioners doubt whether the government will and can adopt this new role and achieve its objective. Moreover, discretionary space and open norms are framed as leading to more regulations rather than deregulation.

This has been the first study to the way planning practitioners frame the EPA and it hopefully provides a starting point to conduct similar analyses to study the way the planning practitioner's framing of the EPA changes. The findings of this study might appear to be simplistic because the basic argument is that planning practice is framed to have its own ways and a law will not change that. However, in my vision the findings of this study provide insight in how planning practitioners frame the act and try to influence its development. This might be of relevance when the general public is provided with the opportunity to react to the draft version of the EPA in spring 2016 (Stibbe, 2015). Following (Rinfret, 2011) I would like to suggest to use the frames identified in this study to analyse how planning practitioners try to influence to development of the EPA as that development progresses to the expected implementation in 2018.

9.2 Limitations and recommendations for further research

One of the limitations of this study is the number of planning practitioners interviewed. Since spatial planning does not necessarily have to be applied by dedicated spatial planners or spatial planning departments (Van Assche et al, 2015), it seems virtually impossible to find all spatial planners or people involved in spatial planning and consult them, but consulting more planning practitioners might yield different results. Therefore, it would be worthwhile to repeat this study using a larger sample to analyse whether the framing showed in this study is reproduced on a larger scale.

This study has dealt with how planning practitioners align and/or oppose frames in the EPA. The scope of this study however was not to determine whether planning practitioners aligned, adopted, altered and/or opposed frames in the EPA or whether the ministry of Infrastructure and the Environment aligned and/or opposed frames of planning practitioners. To determine who aligned and/or opposed frames first, a more large-scale and historically informed study needs to be conducted.

Section 6.1 describes integration as a "*consensus frame*" (Biesbroek et al, 2014, p.8) that holds various and diverging frames on integration, frames that start to diverge as implementation proceeds. That section also describes that sectoral legislation is not a problem as long as the profile and identity of the various parties involved with the legislation are acknowledged. Additional research could focus on exploring how planning practitioners frame integration to see which frames this "*consensus frame*" (Biesbroek et al, 2014, p.8) holds and whether that is problematic for the implementation of the EPA. Moreover, research can be focused on how the debate about the EPA deals with the profile and identity of the parties involved with sectoral legislation.

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