

Making sense of EU state-aid requirements; the case of Green Services

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Abstract

This article describes the establishment of a new local governance arrangement called 'Green Service' in the Netherlands. Under this programme, farmers are financially rewarded - by both public and private bodies - for their nature and landscape management and development activities. Despite a general positive stance, it has taken considerable efforts and time for these programmes to take off, in particular due to uncertainties and discussions on whether these activities would be feasible under the EU state aid regime. The multi level setting in which these rules had to be complied with contributed much to the long lasting discussion on how to interpret these rules and threatened the credibility of this new governance arrangement. We will describe and explain this process by using a so-called 'processual institutional' approach and more specifically by drawing on the socio-cognitive literature on conflict escalation (Pruitt and Rubin 1986; Rubin, Pruitt et al. 1994).

1. Green Services: a short genealogy of a new governance arrangement

From the 1970s onwards both nature conservation and spatial policies in the Netherlands have focussed on the preservation of the country side. National policies not only targeted the threats of a further expansion of the urban area but also devoted specific attention to spatial and environmental impacts of the on-going rationalisation in agriculture (Frouws 1998, p.54). The increased pressure on the country side due to the modernisation and intensification of the agricultural sector called for regulatory measures to preserve the rural areas (Eshuis 2006, p.6). To integrate these agricultural practices with nature conservation, landscape management and recreational demands various agro-environmental programmes have been established. In fact, the government introduced a number of subsidies, based on a compensation principle for suboptimal external production circumstances (i.e. the loss of revenues and additional labour costs), when farmers were ready to take the traditional characteristics of the country side into account.

After an initial hesitance and even distrust of farmers to join these schemes, farmers have become more enthusiastic to participate since the mid 1990s (RLG 2002, p. 22-4). Various authors (De

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Bruijn 1995, Renting et al 1994, Glasbergen 2000 in Eshuis 2006, pp.6-7) attribute credits for this change in attitude among farmers to the so-called 'agricultural nature associations' that have been established since the beginning of the 1990s in the Netherlands.

These national schemes however, which consisted of a largely fixed *set of measures*, were increasingly experienced as inflexible and unattractive because of its bureaucratic implementation, the small allowances and the limited possibilities to appropriate these schemes in a 'territory-based' way. These national schemes were largely based on 'first come, first served' principle which meant that it depended on the farmers which measures were taken in a specific territory. Governmental actors could give this limited direction.

Both local and regional (governmental) actors and farmers wanted to move away from the rigid subsidy schemes that have been developed by the national government and to allow for more bottom-up initiatives in which actors in the field themselves can decide on *how much* they want to pay for *what* measures. Instead of working with a fixed *set of measures*, it had to become possible to set up 'custom-made contracts' with individual farmers or other 'rural entrepreneurs'. In addition, it was proposed that not only public authorities, but also non-profit organisations or private parties should be able to pay farmers, via *private* business contracts, for their nature management and development activities (RLG 2002, p. 19). The call for more autonomy and self-regulation at the local level, was recognized and elaborated by the national government at the beginning of the new millennium. The call for more public space and participation of private actors and market oriented locally based initiatives fitted well in the neo-liberal policy of the government concerning the agricultural sector (Van Duinhoven 2002). Over the recent years, the rural country site has been recognised in various governmental documents as an attractive *consumption space* that could broaden farmers' economic activities and increase their income (MNP 2002, Ministry of ANF 2004, Ministry of Housing 2001, 2006).

The recognition of these changes was marked by the introduction of the concept of 'Green Services' (GS)² in the national *Structure-scheme on the Green Environment* (2002)³ and an advice on this concept by the Council of the Rural Area⁴ in 2002. The concept of GS answered to these changes in various way and in important way reframed the role of farmers in the rural area. The concept GS clearly moves away from perceiving the demand for landscape and nature as a bad external conditions for agricultural production, which should be *compensated* by governmental subsidies. Instead of that, the concept of GS aimed to *appreciate* the measures taken by farmers as

² References to Green Services were also made in the MNP4 and appeared in Parliament before this date.

³ Structuurschema Groene Ruimte. So-called Structure-schemes are national spatial policy documents that target a specific domain, e.g. the environment, transportation, defence, etc. in which the government set out desirable developments and its spatial impacts.

⁴ The Council for the Rural Area advises the Dutch Government and both Chambers of Parliament on strategic policy questions concerning agriculture, nature, forest, landscape, outdoor recreation and fisheries in the rural areas

a commodity desired by society that should be *rewarded* (by both private as governmental bodies) with a market related price (RLG 2002).

Related to the introduction of the concept of GS, numerous initiatives have been developed over the recent years mainly by local and provincial governments and on occasions together with local non governmental actors. In 2006 over 40 initiatives were elaborated (Van Moorsel and Dijkman 2007). A number of these initiatives, including the initiative that will be described in this article, were (financially) supported in an early stage by the Ministry of Agriculture, Nature and Food Quality (ANF). With an eye on the forthcoming discussion on a new European *Regulation on support for rural development* - which provides the framework for European co-financing of rural development and the requirements for state aid to farmers (Tweede Kamer 13 Oktober 2005) - for the period 2007-2013, the minister of ANF wanted to further develop and explore the concept of GS through a number of pilot projects, called *Explorations Green Services* (Tweede Kamer 7 juli 2003; Gedeputeerde Staten van Gelderland 18 februari 2004; Tweede Kamer 2004)

At the same time, around 2003, a lobby had started for the concept of GS aimed at the European Commission (EC), to create more possibilities within the European Regulation to develop and carry out these GS. The EC though, early on stated that market related *payments to farmers* would not be allowed. Farmers could only be rewarded on the basis of the state aid requirements that were already in place, which meant that these payments had to be based, like in the existing schemes, on the loss of revenues and additional labour costs. These state aid requirements could not be changed, according to the EC, because of WTO agreements (Tweede Kamer 13 Oktober 2005, Interview 7 July 2008).

To be absolutely sure that the pilot projects in the 'Exploration' indeed would meet these EU state aid requirements the Ministry of ANF required that these projects were notified to and approved by the European Commission (MNP 2002). Only under these conditions, the pilot projects would get financial support.

The suggestion that the concept of GS would be subject to the EU state aid regime, or at least that the payments had to be based on a loss of revenues and additional labour costs, was not accepted by all local and regional actors that were involved in these pilot projects. In the case that we will describe in this paper the application of these state aid rules was in fact heavily contested. Local and regional actors argued that GS could be organized in such a way that the EU state aid rules would not apply and that it would be possible to pay farmers market based prices. The Ministry though, held on to their position that the EU state aid requirements prohibited the national authorities to provide financial support for GS irrespective of the juridical construction on which these GS would be based.

The application of these EU state aid requirements thereby produced much ambiguity and discussion and led even to an eventual stalemate on how to interpret these rules. The discussion on how to interpret these rules led to a considerable delay and threatened the credibility and trust local actors in this projects, including the farmer on which the success of these GS would depend. Where local and regional actors hoped to conclude the first GS contracts with farmers halfway 2004 it lasted until the beginning of 2007 before they could start working with these GS.

The case-study below will focus on what caused this delay and will describe how actors negotiated on how to interpret these EU requirements. It will describe how actors created this stalemate as well as how actors found a social practice that could save the credibility for these GS projects in the local communities. The case will be described in paragraph 4. This rather (extreme) case will be described and explained by using a so-called ‘processual institutional’ approach and more specifically by drawing on the socio-cognitive literature on *conflict escalation* (Pruitt and Rubin 1986; Rubin, Pruitt et al. 1994). We will set out this approach in the next paragraph 2. In paragraph 5 we will draw some conclusions and reflect on the impact of a multi level setting on the establishment of a new local governance arrangement.

2. Making sense of EU requirements: an ‘institutional processual perspective’

The theoretical framework developed here moves away from perceiving the EU state-aid requirements (and formal legislation in general) as exogenous and autonomous forces that affected the establishment of these new governance arrangements. As the effect of these formal EU requirements in the end ‘lies (...) *in the practice*’ with these rules (Taylor 1993, 58), we will outline an argument in which law is perceived as gaining its ‘meaning through its interpretation and its implementation’ (Edelman, 2004).

To understand and explain how actors made sense of and responded to these formal rule we will draw on both the sociological institutional literature (e.g. Powell and DiMaggio 1991; March and Olsen 1989) as the ‘processual’ social-cognitive literature on sensemaking (e.g. Weick 1995). We believe that both these approaches provide interesting and largely complementary insights with regards to how actor interpret these formal rules (cf. Coburn 2001; Devereaux Jennings and Greenwood 2003). Recently a combination of these two perspectives has been referred to as an ‘institutional processual’ approach (Barzelay 2004; Barzelay and Gallego 2006).⁵

Sociological institutional theory emphasizes that actors often fall back on existing scripts to understand the world and to ‘find out’ how to behave. Previous experiences, existing routines, norms and social-cognitive scripts, all provide the ‘frames of meaning’ that guide human action

⁵ One of the characteristic of these institutional processual approaches is that they make full use of a social mechanisms approach (Hedström and Swedberg 1998; McAdam, Tarrow et al. 2001; Tilly 2001; Mayntz 2004). We do so as well in this article.

(Hall and Taylor 1996: 947). In order to find out how to behave in certain situation, actors will turn to what they know or to what they consider and have experienced as successful (Scott 1995: 45, Black 1997: 60). Certain scripts moreover can become so evident or taken-for-granted that actors may simply see them as 'facts' and feel no need to 'go behind them' (March and Olsen 2004: 7; Termeer and Kessener 2007: 3). When it comes to the interpretation of formal rules and requirements, the SI perspective provides an interesting insight by drawing our attention to the idea that actor 'must find a way of recognizing [these formal rules] as well as of responding to it, and [that] the scripts or templates implicit in the institutional world provide the means for accomplishing both of these tasks' (Hall and Taylor 1996: 948).

Where institutional theory emphasizes the role of routinized behaviour and the role of existing (normative and cognitive) frames, sensemaking literature is concerned with those situations in which it is difficult to interpret our environment. The application of these formal rules on a particular activity can be the cause of this (uncertainty), but this equivocality may also stem from a confrontation with other actors' interpretations of these formal rules (ambiguity) (Weick 1995).

When this equivocality makes it impossible for actors to act, the sensemaking literature argues, actors they will attempt to reduce this ambiguity by 'seeking out' each others' interpretations and guesses. Actors will argue and discuss which meaning should be selected and retained to make sense of this situation (Drazin et alii 1999; Scott 2001: 169). Actors' interpretations, in a sensemaking perspective need to be *(inter)actively connected* to these equivocal situations (Weick 1995:132, 2003: 188, Allard-Poesi 2005).

Obviously the interaction between actors does not take place in a vacuum and it will make a difference who has control over specific resources, knowledge and expertise, procedures, as well as what status, reputation or access to 'the arena' actors have (Weick 1995; Coburn 2001; Weick et al, 2005). The positive or negative power of some actors will affect which meaning actors will and can give to these rules, even to point that some actors will try to impose their interpretation of these formal rules as a new rule or requirement by itself.

At the same time, it is good to realize that 'power is above all a relational effect [and] not a property that can be held by someone or something' (Clegg et alii 2006: 223). It is in the moment of sensemaking that actors will (re)construct and experience this power configuration. Not only these formal rules, but also the interactions and relations between actors (Dewulf et al. forthcoming) need to be either interpreted based on actors previous experiences and existing frames, or (re/de)constructed in this process (Bogason 2000; Marshall and Rollinson 2004; Bergman 2005; Clegg 2006). The social context or setting can be treated as given but as well be more explicitly confirmed or contested by actors.

In addition, it needs to be remarked that the meanings that actors will attribute to these formal rules and the social context or setting will mutually and reciprocally affect each other (Termeer

1993). The meanings that actors attribute the social (relational and interactional) context may not only affect the meaning of these formal rules but turned round, the meanings that actors attribute to these formal rules may also affect how actors will interact and make sense of their relationship and interaction. Actors with similar interpretation for example, are likely to contact each other (Kessener and Termeer 2007).

Escalation

The way these different meanings affect each other can under certain conditions be read or described as a recurring pattern or mechanism (McAdam, Tarrow et al. 2001). Examples of such mechanisms which are often mentioned in relation to the compliance of formal rules or other norms are the mechanism of socialization or conformity. For describing this case study and for explaining the process in which actors negotiated and discussed the meaning of these EU state aid requirements we turn in this paper to the mechanism of escalation.

When actors' interpretations of these formal rules allow them to act according to their preferences and their ideas of appropriate behavior, or take these for granted, they are likely to hold on to their interpretation. Confronted with other interpretations actors will feel less inclined to change their interpretations and accept that of others, especially when these other interpretations do not fit their action logic and/or are experienced as inconsistent or irrelevant (Weick 1995: 61; Checkel 2001). In fact, when another actor's interpretation slows the accomplishment of an activity, this may cause actors to commit themselves to their interpretation and encourages them to persuade the other rather than accept or adapt to their interpretation (Weick 1995, 161; cf. Termeer 1993, 250). When actors fail to persuade the other into one's own position, the discussion, because of actor's commitment, may turn slowly into a heavier debate, absorbing time and attention and possible new actors (Pruitt and Rubin 1986, 64-65) (Brett, Shapiro et al. 1998, 411).⁶ Actor may turn to more assertive and aggressive tactics, such as attributing confusion or casting doubts, or by challenging the legitimacy of the other (Gioia and Chittipeddi 1991; Abolafia 2004: 432). These strategies moreover may be followed by demands, complaints and angry statements or by involving other third parties. A negative spiral of intensifying hostility may be set in motion, in which each reaction is more harsh than the action it follows (Pruitt and Rubin 1986, 90) or in which, when the other actors does not react, actors resort to more harsh tactics to be heard.

Most of the time, particular norms may limit the use of harsh tactics. These conflict limiting norms though, may only be effective with actors that are well socialized (Pruitt and Rubin 1986, 67). When other actor's interpretation and interests seem opposed to one's own (Pruitt and Rubin 1986, 69) and actors find it hard to accept or comprehend this however, these social bond comes under

⁶ The situation in which one of the actor moves to heavier tactics to attain his goal while the other actor merely react is called the Aggressor-Defender Model. The situation in which both actor pursue more heavier tactics in response to each other is called the Conflict Spiral Model.

pressure (Rubin et al. 1994, 130). Actors may change their perception and attitudes towards the other, whereby the other gets seen as less moral or legitimate or even untrustworthy (Pruitt and Rubin 1986, 99), which in turn may result in not giving the other the benefit of the doubt, perceiving their actions as threatening, or thinking in 'zero-sum' terms (Pruitt and Rubin 1986, 100-4). Finding a common position on how to interpret these formal rule may under these conditions and fixations be more difficult then ever and it likely that this escalation process will only come to an end by a stalemate when neither party is able or willing to escalate any further (Pruitt and Rubin 1986, 127).

Under these circumstances (that of a stalemate) actors will come to realise that they cannot persuade or force the other to adopt their interpretation and that they somehow need to find a common solution. A so-called 'integrative solution' under these conditions, may be a way out of this stalemate (Rubin et al. 1994, 173). An example of such a solution is that of logrolling. This is a solution in which each party concedes on issues that are of low priority to itself and high priority to the other party. A bridging solution is a different integrative solution whereby actors search at a different level for a solution. The discussion turns away from this interpretation of the rules to the interests or norm that underlie this interpretation, and whether actors can find a more instrumental 'solution' for this (Pruitt & Rubin 1986). A solution in both these cases is different from a simple compromise that results from an averaging of the initial position and can come closer to both actors positions. (Allard-Poesi 1998, 403).

3. Research strategy

The case study can be qualified as an 'extreme' case in relation to the EU state aid regime. The idea of Green Service as a market based concept that moves away from the traditional way of subsidizing framers appears to be most advocated in the initiative that we will describe here. More then in the other projects that were concerned with establishing these GS, there were strong differences of opinions among actors on how to interpret the EU state aid requirements.

This single case study is analysed by using the method of process-tracing (George and Bennett 2005). In first instance we have chronologically reconstructed what happened when and where and how these events affected each other. To do so we used a strategy of 'process mapping' by which we first, for analytical purposes, graphically depicted the various processes that occurred simultaneously and parallel to each other at different levels. Not all these processes will be discussed in this paper. We will largely confine our self to the interaction between local and regional actors and the Ministry of ANF and their discussion on how to interpretation of these state aid requirements. We belief that this interaction process has been most crucial for explaining the thorny establishment of the new policy arrangement of GS.

The trajectory that we will describe will start at the moment the first ideas on these concept of GS were aired and will be concluded shortly after the ‘implementation’ of these GS in the field. The processes that took place between different actors and at different levels will be largely treated as inputs to this process (cf. Hill and Hupe 2003). For matters of time and space these processes are less extensively discussed in this paper.⁷

The process is ‘reconstructed’ by triangulating data that was gathered through document analysis, secondary analysis and by doing semi-structured interviews with key actors at all governmental levels⁸ (Flick 2005: 179). In the first place we interviewed actors who stood at the basis of this initiative at the local level. We used a snowball technique (on the basis of these interviews and document analysis) to select other involved actors. To get the best idea of how these local actors and initiators experienced the impact of these rules on these new governance arrangement, we believed this was the best way to proceed.

Various types of documents contained in the archives of the various governmental bodies have been analysed, which included amongst others, minutes of meetings and formal and informal correspondence. Besides the publicly accessible parliamentary documents, the analysis of the minutes consisted of internal memos, project notes, policy documents, formal correspondence, etc. that have been made accessible to one of the authors by key actors in this process. Document of the European Commission could not be consulted. Next to that, one of the authors participates as an actor in this process⁹.

4. Green Services Ooijpolder-Groesbeek

The area ‘Ooijpolder-Groesbeek’ is situated south of the river Waal (Rhein) between Nijmegen and the Dutch-German border (see map) in the province Gelderland. In formal terms three Dutch municipalities are involved: Ubbergen, Millingen aan de Rijn, and Groesbeek. In physical geographic respect, this municipal territory has two main characteristics: it is a polder area occupied by farms, villages, landscapes of dykes and nature as well as a hilly part (a kame terrace result of an ice contact feature) with arable land, meadows, forests, and residential settlements. This municipal territory is also part of a so-called ‘national landscape’, called ‘the Gelderse Poort’, a vital policy category introduced by the national authorities.

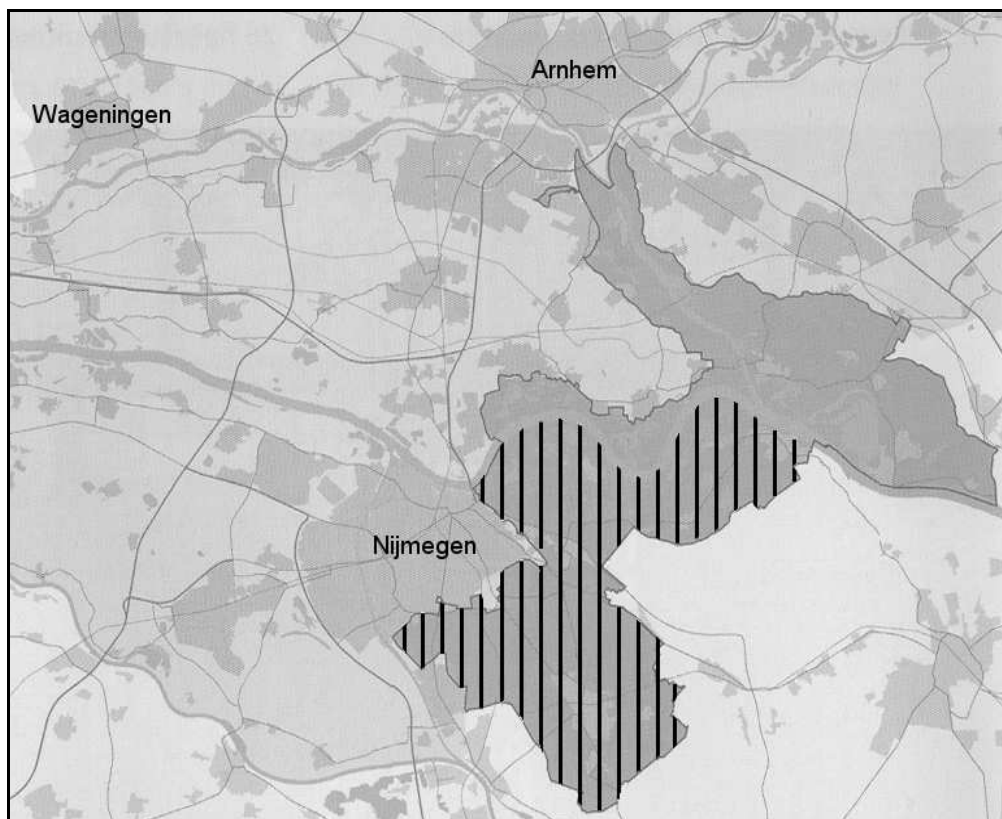
It is important to notice that the national spatial planning authorities decided already in 1972 that the quality as an open space of this rural area should be protected against large scale extensions for housing or industry by the city of Nijmegen. Some years later, this decision was contested by a

⁷ This would not only lengthen the case description, but would also have necessitated us to elaborate on the theoretical framework and include other mechanisms to explain this case study.

⁸ At this moment not all interviews have been concluded. It is especially difficult to arrange interviews with actors at the Ministry of ANF.

⁹ On invitation of the three municipalities in the ‘Ooijpolder-Groesbeek’ area, one of the authors is member of the Board of the Landscape Development Fund called ‘Via Natura’.

proposal of the Ministry of Traffic and Water Management that offered a more straight riverbed (Lobith – Nijmegen) through the polder in order to support rational-economic bulk-cargo shipping from Rotterdam to Germany, France and Switzerland. However, social political movements, locally and nationally, resisted this plan effectively. The ‘Ooijpolder’ was reconfirmed as an area for agriculture as well as for nature and landscape. However, this confirmed spatial status of the polder area became under attack after two shock events of very high river floods in 1993 and 1995. Then, the Ministry of Traffic and Water Management destined a great part of this area as a retention basin in case of unavoidable river floods. According to a people’s movement, however, the authorities used incomplete information concerning water supply in the future as well as they argued lacking much relevant knowledge concerning assumptions in water management used by the German authorities.



Map: The city of Nijmegen with the area Ooijpolder-Groesbeek

At the beginning of the millennium various local non-governmental actors in this area had taken the initiative to set up a programme that would involve farmers in the maintenance and development of the country-side and would reward them for these activities by market based price. The extra income would enable farmers to continue farming which is a precondition to sustain the mixed landscape of cultural and natural grounds typical for this territory (Provincie Gelderland December 2003). In 2001 this initiative was incorporated as a so-called ‘experimental garden’ project in a pilot of the Ministry of ANF. This pilot aimed to give an impetus to the quality of the

rural area by stimulating bottom-up initiatives. On behalf of the Ministry of ANF, the Province of Gelderland took responsibility for this ‘experimental garden’ at the regional level, but also the municipalities in the area became more involved in this project (we will refer to them as ‘the local actors’). Given its fit with the concept of GS, the project was, when the ‘experimental garden’ pilot was cancelled due to financial cut backs, included in the above mentioned pilot project ‘Exploration Green Services’ of the Ministry of ANF.

In this context the three municipalities in the area produced a common landscape development plan (LDP) that anticipated on various development in the country side and had to give direction to these GS. Besides preserving the agrarian production function in the area the plan provided also a new perspective for coping with a number of recreational developments. The LDP includes circa ninety preferable rather detailed project proposals, though it does not exclude in advance new ideas that might come up during the implementation process in fit the plan; the LDP will be used in a flexible way (Gemeenten Groesbeek, Millingen a/d Rijn et al. 2004). Beside long term management and conservation projects, i.e. the GS, the projects in the LDP also consisted of one time investments projects, such as the removal of hiking barriers. In July 2004 the LDP was official approved by the councils of the different municipalities.

A new financial judicial regime

During the policy-making process of the LDP it became clear that *a new financial judicial regime* had to be elaborated that could support the realization of especially the GS projects but would not be interpreted as a subsidy to particular firms and hence, produce a conflict with EU state aid requirements. When the payments of these projects would be subject to the EU state aid requirements, this would set restrictions on the height of the payment and the length of the contracts (this would be six years¹⁰). Payments then would have to be based on the loss of revenues and additional labour costs, while actors in the field wanted to value these activities positively and offer a market based price. Moreover, actors wanted to avoid the uncertain and time-consuming EU state aid notification process that would become necessary when these project would fall under the state aid requirements (Interview 11 June 2008 (a)). If one wanted to use the plan in a flexible way and allow for changes and adjustments, it would become necessary to notify any new GS project to the Commission at the moment that a farmer would be willing to participate.

In order to create a financial-juridical construction that would not be subject to the EU state aid regime, the three municipalities invited an independent consultancy office to prepare an advice (KPMG 2004). Based on its understanding of the EU state aid requirements the consultancy office advised to found an independent ‘landscape fund’ that could enhance these GS, as ‘services of

¹⁰ Under the EU state aid requirements, farmers can only be contracted for societal services that ‘go beyond what is legally obliged’. Because formal rules (like environmental legislation) are constantly updated, and the definition of what is legally obliged can change, the contract periods can be only relatively short.

general interests' based on accountable and market inspired (and priced) business contracts. The landscape fund would be 'filled' with both public and private money. Governmental contributions were considered to be of importance especially at the start of the fund to cover overhead costs and to create a financial multiplier. Financial support by governmental bodies, could increase the acceptance and trust of private actors in the landscape fund and motivate them to contribute as well (ibid, pp. 4-5).

To make absolutely sure that these payments would not be qualified as state aid, it was suggested to separate the *agrarian function* of their land from an *additional recreational or natural function* on which the landscape fund could place natural and landscape elements. By separating these functions it would become possible to by-pass the EU state aid requirements for farmers as they would not carry out any agrarian activities on this land. Via a 'building and planting right' the elements that would be placed on this land could remain the property of the landscape fund and by consequently vesting a so-called 'servitude', the landscape fund could oblige the farmer to allow certain activities on his land, such as the recreation of others, or oblige him to undertake certain activities himself, such as maintaining these elements. By using this financial-judicial construction, farmers would not have an economic benefit (as farmers) and it would become possible to qualify these services as a 'service in the general interest' to which these state aid requirement would not be applicable (ibid, p.16, 40).

The report of the consultancy agency, suggesting that this construction wasn't a subsidy arrangement, could not convince all governmental actors. The Ministry of ANF, on which the project depended for its financial support (the project would receive two million euros) in particular, was not fully convinced of the conclusions of the report and stressed that the projects had to be notified to the Commission in order to receive any financial aid. The Ministry argued that the complex construction that was suggested by the consultancy office made it difficult to tell whether these GS projects would be possible within the European legal framework. According to the Ministry, the rapport only gave a direction for setting up these GS project in such a way that they would not qualify as state aid, but did it not explicitly checked these GS projects on the state aid requirements. The Ministry, which more in general doubted whether a financial construction that would involve farmers would not be subject to the EU state aid regime (see below), stressed that one could not conclude that a notification of these projects in 'Brussels' would not be necessary (Tweede Kamer 22 november 2004).

Increasing contestation

A notification in Brussels, as said, was felt as very unwelcome by those in the field. Taking into account these EU state aid requirements would not only imply all kinds of restrictions on the height of these payments and the period of the contract and thereby affect the willingness of farmers to participate, but would also mean that each GS contract with a farmer, would have to be

checked by 'Brussels'. This would raise the transaction costs and create a lengthy period of uncertainty on whether these GS project could be carried out. The credibility of enlarging the scope of farming by GS could thereby become easy under pressure, while a notification in Brussels was, according to these local actors, unnecessary.

The interpretation of the Ministry of ANF that these projects had to be notified was therefore not straightforwardly accepted, all the more as local actors felt that the Ministry could not provide a good argument why this construction could not be possible. Instead of following the interpretation of the Ministry, they tried to convince the Ministry of their position. In order to do so, local and regional actors sought direct informal contact with DG Competition of the EC to find support for their stance that their construction was feasible under the EU state aid regime. Although DG Competition stressed that DG Agriculture and Rural Development ('DG Agri') has to decide on this, they stated this in principle should be possible (interview 19 April 2007). Supported by and through civil society organisations, a.o. World Wildlife Fund (WWF), a lobby was further organized directed at the Ministry stressing that these GS in the 'Ooijpolder' are 'services of general interest' and therefore not fall under the EU state aid regime.

Where local actors used the statements of DG Competition and the advice of the consultancy office to look for leeway in these rules, the Ministry of ANF was much more careful. The Ministry played it safe as the Minister eventually will be held responsible by the Commission when these requirements are not met. The Ministry wanted to make sure that these projects would be 'Brussels-proof'. Where local actors argued that these 'services' would not distort the functioning of the internal market, the Ministry of ANF argued that things were not that simple (Ministerie van Landbouw Natuur en Voedselkwaliteit 2005, interview 21 March 2008). According to local actors, the Ministry was departing too much from the existing agri-environmental schemes that were notified to the Commission under the *Regulations for rural development* and they looked insufficiently for the leeway these European requirements offer. Local actors argued that the Ministry of ANF, assumed wrongly that 'once a farmer is involved, these Green Services automatically qualify as state aid.' (Provincie Gelderland 25 September 2004; Gedeputeerde Provincie Gelderland Keerweer 5 November 2004). The Ministry of ANF however, could not be persuaded to take a different look at these EU requirements; it was unreceptive to these arguments.

Local actors though took a similar inflexible stance on how to interpret these rules (interview 19 April 2007). Instead of following the Ministry they got more committed to their interpretation, partly as they felt not being taken seriously by the Ministry. (Ministerie van Landbouw Natuur en Voedselkwaliteit 2005; interview 21 March 2008; interview 26 June 2008). During the discussions with the Ministry local actors became suspicious of the Ministry of ANF and started to involve more parties in this process. Besides the different NGO's that were mobilized to lobby for this

concept, also Members of Parliament became involved in this discussion. Initially Members of Parliament called for a more detailed argument by the Minister of ANF of why the construction that was proposed by the consultancy agency was not feasible (Tweede Kamer 22 november 2004). Later on Members of Parliament asked more in general whether the GS project in the 'Ooijpolder', could be qualified as 'service of general interests' (Tweede Kamer 26 april 2005).

The suspicion also manifested itself in more direct contact with the Ministry of ANF. In direct e-mails to senior officials, local actors complained in particular about the stance taken by the department of Judicial Affairs (Ministerie van Landbouw Natuur en Voedselkwaliteit 2005), but also in more formal correspondence the critique on the Ministry was made known (Gedeputeerde Provincie Gelderland Keereweer 5 november 2004; Gedeputeerde Staten van Gelderland 5 oktober 2004). In an official letter, a member of the provincial executive of Gelderland called upon the Minister to 'use his authority to let his civil servant follow the outlook of the independent jurist' that were hired by the province, so one could start with the implementation of the LDP (Gedeputeerde Provincie Gelderland Keereweer 5 november 2004). The Minister rebounded the complaint and argued that the discussion on the application of the state aid requirements by the Province of Gelderland itself hampered the implementation of the LDP (De Minister van Landbouw 25 januari 2005).

Going to 'Brussels'

At the insistence of the Ministry of ANF, the province of Gelderland meanwhile had started with the official state aid notification procedure for the GS projects that were proposed in the LDP. While the province complied with the requirement of the Ministry to notify these project in Brussels, it insisted on its position, support by independent jurists, that these project were not subject to the EU state aid regime. The notification that was being prepared by the province concerned 'a non-aid measure which is notified to the Commission for reasons of legal certainty' (Provincie Gelderland 31 januari 2005).

Being concerned about the continuity of implementing the GS projects of the LDP, the province of Gelderland took the initiative to organize a meeting with DG Agri and the Ministry of ANF to make clear which operational criteria the EU-Commission would use to decide on the GS projects in the 'Ooijpolder' (Gedeputeerde Staten van Gelderland 5 oktober 2004; Tweede Kamer 26 april 2005). After some insistence of the province, a meeting with civil servants was organized by the Ministry of ANF in April 2005 (interview 19 April 2007). The province expected to have a good chance to convince the Commission that these state aid requirements would not apply to their initiative.

Like the Ministry of ANF the Commission however, advised against a 'non-aid notification' to the Commission and made clear that payments had to be based on the loss of revenues and additional labour costs (Ministerie van Landbouw Natuur en Voedselkwaliteit 2005). These services could not be qualified as 'services of general interest' as farmers would benefit, no matter how much,

from these GS contracts (interview 11 June 2008(a)). In this specific case the Commission for example, wanted to know what would happen with the grass that would be 'produced' when farmers would mow their land as a GS for creating a hiking path. As soon as this grass would be used to feed their livestock this would qualify, according to the Commission, as a distortion of the internal market (interview 3 May 2007; interview 11 June 2008(b)).

Local actors in the 'Ooijpolder' were shocked about the legalistic and rigid (in their eyes unrealistic) application of these state aid requirements (interview 19 April 2007). Notwithstanding this lack of understanding for the position taken by the Commission and a feeling that when the GS in the Ooijpolder were differently put to the fore by the Ministry of ANF this construction would have been possible (interview 19 April 2007), the discussion on the application of the state aid requirements was winded up.

After the meeting with DG Agri the Ministry of ANF and the province made an agreement to jointly move ahead. The province would within short notice indicate which projects in the LDP would be subject to the state aid regime, so that these could be notified in Brussels before the Summer recess of 2005 (Ministerie van Landbouw Natuur en Voedselkwaliteit 2005). The Ministry of ANF would give a decisive answer on how these project had to be qualified and which of them would have to be notified in Brussels. As local actors now had to wait on a decision of the Commission, the province of Gelderland wanted to use the part of the finances that were reserved for the 'Exploration', for those projects that would not have to be notified (Gedeputeerde Provincie Gelderland Keerweer 26 oktober 2005).

Catalogue Green Services

The meeting in Brussels was also used to discuss in more general terms the relationship between these GS and the EU state aid notification procedure. Besides the initiative of GS Ooijpolder-Groesbeek, various other projects had been launched by regional governmental bodies, as has been mentioned above. While the debate on GS Ooijpolder-Groesbeek was still on at the national level, already five schemes had been notified to the European Commission and this had caused severe difficulties. The novelty of these projects in combination with the accurate examination of the Commission had resulted in a substantial workload at the Commission's desk-office, and in a lengthy and uncertain procedure for those that wanted to start with these projects. To overcome this hold-up the European Commission requested the Netherlands during this meeting to better organize the notification of these schemes and to work on a complete and definite overview of the services that the Netherlands wanted to implement (interview 3 May 2007; interview 11 June 2008 (b); interview 26 June 2008).

The Commissions' suggestion was welcomed by the Netherlands, that saw a chance to deal with the long trajectory towards the European Commission, and on the initiative of the Ministry of ANF, the provinces were involved to develop this overview. GS was explicitly seen by the

Ministry as a provincial concept and in the light of a decentralization policy it was found desirable to involve the provinces in the development of this overview of GS (Tweede Kamer 13 Oktober 2005, interview 21 March 2008, interview 26 June 2008). Timing was perfect as the provinces had recently organized themselves around the concept of GS and had set out their ambitions and expectations (Interview 26 June 2008).

Instead of making a definite list on these Green Services, the provinces suggested to develop a 'catalogue' that would consist of separate measures/services, together with a *maximum* price. The provinces suggested to create a flexible format based on which individual schemes could then be developed. These individual measures would be based on the different projects that had been developed over the recent years by the various provinces and other local actors (interview 3 May 2007).

The GS projects in the Ooijpolder would in first instance be excluded from the Catalogue. Involvement would mean a further delay for the implementation of the GS of the LDP and proceeding alone was preferred. The notification of the project and the contact with the Ministry of ANF went less prosperous than was hoped. The Ministry of ANF and Internal Affairs, which is officially responsible for the notification in Brussels, called several times for more detailed information on the GS projects that were mentioned in the LDP. The notification which they had hoped to round off before the summer, was delayed and joining the Catalogue was seen as a more and more realistic option. Other provinces also put pressure on the province of Gelderland to include the GS projects of the Ooijpolder in the Catalogue (interview 26 June 2008) as they wanted to have a common position of the provinces on this catalogue (Keereweer 18 november 2005). Even though those in the field still principally objected the application of the EU state aid regime and were hesitant to participate, it was realised that the establishment of the Catalogue offered the opportunity to make the EU requirements that must be met explicit and to act in a flexible manner to implement the LDP. The GS projects of the LDP were eventually all included in the Catalogue. Though the Catalogue follows the state aid regime, the 'Ooijpolder-Groesbeek' polity accepted the Catalogue as *modus vivendi* to produce visible results in the area.

Since the beginning of 2006 the provinces designed the catalogue in constant contact with the Commission. In February 2007 the Catalogue was approved (Commission 2007).

Meanwhile financial resources had also been made available by the Ministry of ANF to implement those projects of the LDP that would not be subject to the EU state aid regime (De Minister van Landbouw 2 november 2005). Under the proviso that the Minister of ANF could retrieve his money, he was willing to make this money available. Despite these finances however, one could still not carry out the GS projects in the LDP as the Catalogue was not approved and the credibility of these GS remained under pressure. To ensure the credibility of these GS projects a member of the provincial executive therefore decided to support a number of GS projects that they

believed were not vulnerable for state aid procedures and to give financial support to these projects before approval of the Catalogue. The risk that these project would be subject to the EU state aid regime after all was weighed against the risk of losing confidence of local actors in the field in these GS projects (Gedeputeerde Staten van Gelderland 28 juni 2006). At the end of 2006 the first GS projects were carried out on the basis of this financial support.

The state aid requirement finally encouraged local actors to look for private financing possibilities for these GS. By making use of private money one could by-pass the state aid requirements all the way. In order to raise enough *private money* the trustees of the landscape fund Via Natura, together with a civil society organisation (ARK, non-profit specialists in landscape projects) and a private firm with expertise concerning organisational innovation in landscape and nature affairs (Triple E) organized an public sale in August 2007 in which the landscape elements were put up for auction to private participants. An often used slogan is that urban dwellers will get the opportunity to participate financially in the 'green natural theatre' around them. The 'Prospectus Ooijpolder' included circa 30 smaller and greater landscape elements to be maintained for a period of six till ten years with start bidding varying between € 500 and € 20000. The trustees of the landscape fund contracted individual bidders, civil society organisations, schools, private businesses, etcetera.¹¹ On the basis of these private financial means most GS projects are financed. As they do not have to meet the state aid requirements these contracts can be signed for a period of 10 years (interview 19 February 2008).

5. Conclusions

The case study demonstrates that making sense of these EU state aid requirement in a multi level setting is not always easy and can even be accompanied by contestation and conflict. Actors at different governmental levels attribute different meanings to these rules and have different reasons for holding on to these interpretations. The case study shows how actors at the national level were largely guided by their previous experiences and the responsibility of the Minister in case of a breach with EU law. Where the Ministry acted risk avoidant, local actors were eager to look for leeway that EU requirements in their eyes offered, encouraged by their principle stance that it should be possible to positively reward farmers for their landscape activities. They saw support for their position in the advice by independent jurists and consultants and the informal statements of DG Competition.

Even though the Ministry of ANF was in a position to lay down their interpretation of these formal requirements as a requirement by itself through its control over financial means that local actors

¹¹ However, each participant had to pay the whole bid within four weeks after the auction. In other words, no yearly terms are accepted. Of course, the participants have benefits which will have different forms. For example, a yearly guided tour by the farmer, an information session about the total landscape plan, a pick-nick on the spot, a sponsor-record at the spot etcetera.

felt dependent on, local actor heavily contested this requirement. In stead of accepting the authority and expertise of the Ministry on how to interpret these rules, local actors mobilized their own expertise and tried to persuade the Ministry to adopt their interpretation of these rules. Their dependency on the Ministry did not caused them to accept their interpretation but committed them to trying to convince the Ministry (Pruitt and Rubin 1986, 71). Subsequent to a number of 'persuasive strategies' such as the mobilization of expertise and selecting information that supported their position, actors turned to more assertive and aggressive strategies to convince the Ministry. The mistrust in the Ministry that they developed over the course of this negotiation process caused local actors to mobilise third parties and search contact with senior officials and even the Minister.

The delay that resulted from this discussion eventually led local actors to search for a direct contact with DG Agri and to move the discussion from the national level to the European level. Although local actors did not succeed in getting approval for their interpretation of these rules, the meeting does open a window for finding a solution to the ongoing discussion on the application of these state aid requirements. By providing money for those project that are not subject to state aid requirement actors could start with the implementation of the LDP, while the Catalogue, although it set limits to the payments for farmer, allowed for a more flexible way of creating GS. An instrumental 'bridging solution' was eventually found.

The processual institutional perspective that we have used in this article to describe this process has helped us to describe the process by which these rules are put into operation in a multi-level setting in which it self is largely constructed at the same time. A process perspective allows for incorporating the complexities and moving setting in which actors have to make sense of these rules, their interactions and relations, and in which the traditional authority of the state is no longer taken for granted.

By being attentive to certain mechanisms we have tried to manage the complexity of this case and to acquire a better understanding of this process than what would have been possible by a mere description. By making use of the mechanism of escalation we have gained a deeper insight in how actors' understandings and interpretations of the social setting in which they find them self and their interpretation of these rules influenced each other and eventually affected the establishment of GS.

The case study further shows that a variety of processes take place at the same time and affect each other in this multi level setting. The outcome of the interactions between different actors at the local level, are the input for the discussion between the province of Gelderland and the Ministry, while the Ministry is affected by their interactions and experiences with DG Agri. For matters of space and time we focused largely on the interactions between local actors and the Ministry of ANF. It would be interesting however, to describe in more detail for example how

local actors somehow 'cultivated' their mistrust in the direction of the Ministry and to elaborate on how this process affected their interaction with the Ministry of ANF and vice versa. Treating the outcomes of these 'other' interactions as mere inputs may in fact reduce the complexity of the multi level setting in which these rules need to be complied with too much. Deciding on which processes should and should not be included and to what extent in a multi level case description is a difficult task.

In the view of local actors and the initiators of this new governance arrangement, the multi level setting presents a complex network of different institutions and interdependent actors of which the authority and expertise is not always clear. The chains of mutual dependency among the actors at different levels can become so long and at times so unclear that stalemates can easily occur. Local actors remained extremely astonished that their public-private initiatives are part of a very complex world of multi-level governance. Persuading other actors to take a different stance or interpretation on these rules moreover, is difficult as actors point at agreements they have made with others. This multi level setting is full of different institutions that are touched upon by this new governance initiative.

It is then creativity and the entrepreneurship of actors (Kingdon 1984) that can help to pass the obstacles by changing the existing institutions and the underlying power configuration (Haugaard and Lentner 2006; Goverde et alii 2004; Goverde et alii 2000; Clegg 1989) or by finding innovative ways to fit their initiative within this configuration. These strategies though may fail and bring with them the risk of further escalating a conflict and delaying the establishment of these new initiatives, without knowing whether this will eventually turn out in the benefit of the project. Local actors have to make the difficult choice of holding on to their own wishes or following that of others on which they partly depend for carrying out their initiatives.

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