Concepts for the framework and adaptation of several instruments in the implementation phase of a (spatial) planning process

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1 Conclusion - executive summary

Over the past years, spatial planning processes in Flanders have evolved in such a way that they not only pertain to changes in land use (anchored in a land-use plan, in Dutch "ruimtelijk uitvoeringsplan" or "RUP"), but also include a global package of spatial and sectoral measures. The interplay between the different sectoral themes within and with the spatial planning process is embedded as clearly as possible in the land-use plan. Still, attempts to organise this interplay have lately turned out to be inadequate. They in any case do not provide any guarantees against a suspension or annulment by the Council of State. Case law stipulates that the framing and tuning with accompanying and supporting instruments (like the strategic environmental impact reporting, the appropriate evaluation, the water test, etc.) is insufficiently visible and is not taken into consideration by the Council of State. The issues to be examined in this study are formulated by the contracting body, i.e. the Spatial Development Department Flanders of the Flemish authorities, on the basis of three observations.

Observation 1 - Insufficient transparency and unclear status of overarching choices in spatial planning processes

For a number of years now, not only spatial instruments (as included in the Flemish Codex on Spatial Planning) are used during complex spatial planning processes, but also what is referred to as action programmes, accompanying policies or mitigating measures. These action programmes can encompass all kinds of measures that are deemed necessary for the planning process by the actors, but which cannot be anchored in the land-use plan and are therefore established parallel to it. The overarching package of measures (action programme linked to a programme in principle for a land-use plan) is decided at the regional level by the Government of Flanders, but does not have any clear status. Both spatial and non-spatial choices which have already been made on the basis of this decision must each time again be substantiated when use is made of the instruments to implement this action programme.

Observation 2 - Importance of the written rule and the principle of legal certainty

The perception is that land-use plans receive a disproportionate amount of attention, whereas they represent only one instrument in the complex interplay between various instruments and interventions that are often insufficiently highlighted or even not considered at all in the public debate and procedures, even if they were decided together with the land-use plan. The land-use plan
seems to have become the be-all and end-all of instruments. However, (1) it is no more and no less than a decisive moment in a process of follow-up stages (for instance licensing policy) and (2) is combined with interventions, many of which cannot be entered in or linked to the land-use plan because they are not spatial in nature, although they do form part of the balance of an overarching package of measures. The excessive focus on land-use plans also manifests itself in legal disputes over land-use plans. In case of dissatisfaction with (certain aspects of) a package of measures, only land-use plans are targeted, because the other instruments that are decided simultaneously are not considered together with the land-use plans or because there is no other possibility to challenge accompanying policy decisions.

Observation 3 - Denial of the principle of tiering

It is mostly denied that land-use plans are (but) a link in a (tiered) system of decisions that are taken at strategic and planning level and are followed by decisions at a higher level of detail (such as implementation through building permits, allotment permits, etc.). Measures from the action programme as well should be clearly positioned within this system. They too form (but) a part of this tiered system and are rendered more concrete in other instruments.

The reason for this study is the problematic status of land-use plans, as indicated in the observations above. The purpose of the study is to gain insight into potential concepts for a transparent, firm and more legally certain coordination between different instruments for implementing a spatial planning process and, in particular, in relation to the land-use plan. We develop these concepts by studying the current planning practice in five countries or regions (Netherlands, Brussels-Capital Region, France, Germany - Brandenburg/Berlin, Finland). This is done on the basis of desk research, but mainly also of insights we have acquired during interviews and brainstorming and workshop sessions with experts from these five regions. We take four themes from the analysis and conducted interviews which are relevant for the integration of sectoral themes in zoning plans ("bestemmingsplan").

1. The content of a zoning plan. All regions have rules in place about what can be included in a zoning plan. In each of the regions, the functional use of the land is also specified in the plans. Apart from that, the content and level of detail of the zoning plans can differ greatly between the regions.
The content of zoning plans is not just determined by law or standards, but is also partially defined by how the concept "good spatial planning" is interpreted, or by what is regarded as "spatially relevant". The interpretation of the concept "spatially relevant" is different from region to region and is often fleshed out more widely than "related to the environment". The level of detail of the zoning plans also varies from region to region, but is higher in all regions than in Flanders. Especially in comparison to the regional land-use plans, the zoning plans in the other regions are more detailed. This undoubtedly has to do with the fact that the zoning plans in the other regions are only drawn up at the local level. In the studied regions a more specific division of tasks is in place between the planning levels and only the local level has competence for drawing up zoning plans. In addition, local zoning plans in the Netherlands and France have only a limited term of validity. After 10 years /9 years, the zoning plan (NL) / PLU (FR) is to be evaluated and, if necessary, revised. Because of their local character and because the plans are only valid for a limited period of time, they can be drawn up in greater detail. Although the zoning plans are only drawn up at the local level, they can still be made by several local authorities in a number of regions. Both in France and in Finland there is the possibility to draw up inter-municipal zoning plans. In Finland (Joint Masterplan) this is not applied all that frequently, because it means that the municipalities have to give up part of the large autonomy they have in terms of spatial planning responsibilities. In France, where municipalities are often very small, this instrument (PLUi) in which a zoning plan is drawn up by an inter-municipal association is used much more often and will even be mandatory from 2017 onwards.

2. Commitments. During the process of creating the zoning plan a number of regions use commitments, like contracts, covenants, agreements, etc. to still legally embed (sectoral) measures which cannot be regulated in the zoning plan. These commitments are concluded before, during or after the planning process. In most regions commitments have been entered in the legislation as an official spatial planning instrument. The degree to which these commitments are made public and can be challenged differs by region. The commitment in itself cannot be challenged or appealed against in any of the studied regions. Only the zoning plan can be challenged before a court of law. That is why the essential elements and problems must always be included in the zoning plan. In most regions a principle of passive open government is in place (the public has the right to peruse the commitment). Only in Finland do the commitments have to be made public in full.
3. **Sector planning has its own instruments.** Nearly all regions (except for BR) have a decision-making procedure in place for sectoral decision-making with a clear spatial dimension (like infrastructural projects) that does not fall within the scope of spatial planning. This decision-making procedure can result in a "plan approval decree" which allows for the project to be realised and imposes the adjustment of all required documents (including zoning plan, contracts, etc.). The plan approval decree is preceded by a process of study, consultation and participation. Both the processes of environmental impact reporting and public consultation are completed and a transparent decision-making process is available. The "plan approval decree" is usually taken at the national (and sometimes regional) level. No zoning plans are drawn up at this level in the other regions. Therefore, this instrument cannot be used. This is very different to the situation in Flanders.

4. **More integrated planning.** In a number of regions there is great involvement from actors in the process of creating a zoning plan. In many cases, public consultation and participation already take place during the early stages of the process and in this way allow the support for the project to be assessed from the very start. Environmental impact reporting as well is an integrated part of the formal spatial planning process in the regions. The coordination between the sectors and the observance of environmental impact takes place in the course of the planning process (among other things BR: *begeleidingscommissie* (support committee), NL: *voorwaardelijke verplichting* (provisional obligation)). As a result, regard is taken of diverse sectoral interests, objectives and measures in the planning and greater social support is created for the zoning plans.

Apart from the aforementioned lessons learnt, the analysis of the planning systems and interviews in the different regions also led to the realisation that there are several clear differences with spatial planning in Flanders. The planning system in Flanders has a number of specific characteristics, which clearly distinguishes it from the planning systems in the other studied regions.

1. **Regional plan.** Of all the studied regions, Flanders and Brussels are the only regions with an area-based statistical zoning plan at national level, i.e. the regional plan.

2. **No strong strategic planning (any more).** In Flanders, a spatial long-term vision was only devised at the national level in 1997 (i.e. Spatial Structure Plan for Flanders), which was then

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1 We refer here to the term used in Germany (*Planfeststellung* - plan approval procedure or decree), because it is embedded in the legislation here in the most formal and unambiguous way. The other regions have a similar procedure/instrument.
revised to a limited extent in 2004 and 2011. In the early 2000s, however, greater focus was placed on the strategic character of spatial planning. From 2005 onwards, the planning processes, including those that resulted from the Spatial Structure Plan for Flanders, became increasingly disconnected from the long-term vision and the greater principles. Today, the ‘project mode’ or ‘area-based development’ predominates over the development of a long-term vision again. The lack of a contemporary framing spatial policy plan reinforces the ad hoc policy and the focus on project-based developments at the Flemish level.

3. **Zoning plans at three planning levels.** In none of the studied regions zoning plans are drawn up independently from each other at all planning levels. Especially at the national level no zoning plans are drawn up in the other regions. Sometimes, regional regulatory plans are in place (Brussels, Finland). However, in most regions zoning plans are only drawn up at the local planning level.

Due to the continued impact of the regional plan, the lack of strategic planning and the Flemish planning system with land-use plans at three planning levels, great focus is placed on zoning plans in Flanders. This is owing to the fact that, apart from the regulations, Flanders only uses the land-use plan in the form of a zoning plan as an official implementing instrument of spatial planning at the three planning levels.

The four lessons we have learnt from the analysis of the planning systems and the conducted interviews in the regions cannot be directly translated into ready-made concepts because of the specific character of planning in Flanders. Therefore, these lessons learnt must so to speak be put through the ‘planning sieve in Flanders’ in order to be reduced to three concepts that can be used by Flanders:

1. **Concept 1 - ‘Comprehensive land-use plan’.** The possibilities of the land-use plan are extended compared to its current options. All elements, measures and actions that are deemed relevant for the spatial planning process can be entered in the ‘comprehensive land-use plan’.

2. **Concept 2 - ‘Extended land-use plan’.** The second concept retains today’s land-use plan, but also develops a new implementing instrument within spatial planning; i.e. the commitments. Commitments may include action programmes, responsibilities, financial commitments, etc. The concept of the ‘extended land-use plan’ thus allows to embed more aspects in a document which is independent from (but of course still connected to) the land-use plan.
3. Concept 3 - 'Reduced land-use plan with environmental decree'. Instead of overloading the land-use plan and embedding as many elements as possible in it, the land-use plan is 'slimmed down'. The land-use plan is reduced to the essence of a zoning plan and is only aimed at adjusting the uses of the regional plan and providing a framework for actions requiring a licence. The idea behind the 'reduced land-use plan' is that, by limiting the possibilities of the land-use plan, more emphasis is placed on implementing a sound spatial process rather than on designing the product 'land-use plan'. In the concept of the 'reduced land-use plan with environmental decree', the stakeholder interests and sectoral measures are considered within a tiered/funnelled spatial planning process and not at the level of the land-use plan. A tiered decision-making process could be developed for all spatial processes, with each stage of the spatial planning process being concluded with an 'environmental decree'. This environmental decree is not a planning document. It is a policy decision, a political decree that concludes a specific stage of the spatial planning process.

It shows from the work sessions with the Spatial Development Department Flanders and the support group that there is a clear preference for Concept 3 'reduced land-use plan with environmental decree' as potential solution. Concept 3 has the biggest chance of providing a solution for the problematic status of land-use plans indicated in the observations.

Concept 3 'reduced land-use plan with environmental decree' indeed has the potential to promote tiered decision-making (the principle of tiering). However, at the same time it makes adjustments to the plan possible. Concept 3 promotes tiered decision-making in two areas. On the one hand, the concept makes a clear distinction between taking the environmental decree and the (more specific and often also more detailed) implementing instruments that are to shape this decree. On the other hand, the concept also offers the possibility to take several, consecutive environmental decrees. This allows for implementing instruments to be used and/or agreements to be made for each individual environmental decree which are important at the time the process is implemented. Studies (impact) assessments and tests are also at all times carried out in view of the intended decision-making in the environmental decree. Moreover, the environmental decree also pays the necessary attention to a well-founded substantiation of the choices made. The environmental decree explains why certain actions are taken at this stage and why others will be taken at a later stage. This makes the process architecture and decision-making process very transparent.

The combination of 'reduced land-use plan' and environmental decree also makes it easier to make adjustments to the plan or process. The reduction of the land-use plan in Concept 3 ensures that the
content of the ‘reduced land-use plan’ is more limited and the procedure can be shortened as well. As a result, the ‘reduced land-use plan’ cannot only be adjusted more readily, but the focus is also shifted to the environmental decree which is more dynamic in nature.

Within this concept the ‘reduced land-use plan’ can no longer be regarded as the be-all and end-all of instruments for legally anchoring the outcome of a spatial planning process. The ‘reduced land-use plan’ continues to be necessary, but cannot suffice. As a legal-administrative instrument the ‘reduced land-use plan’ is still necessary, because in Flanders a regional plan is required which can be adjusted. However, because of this ‘reduction’ it can no longer guarantee the implementation of a spatial planning process. Concept 3 ‘reduced land-use plan with environmental decree’ is no longer based on a planning process that is conducted within the framework of the spatial planning instruments, but on an integrated planning process in which various stakeholders, policy areas and levels of government work together within an open and transparent process to achieve supported and practicable environmental decrees.

In this way Concept 3 realises a break in trend and presupposes a shared political responsibility. The environmental decree is a political decision expressed via a regulatory decree which equally discusses a large number of competences. The spatial planning process is not just supported by spatial planning, but presupposes a shared responsibility across the different policy areas to arrive at a supported environmental decree and within which various departments use their implementing instrument. The development and application of Concept 3 ‘reduced land-use plan with environmental decree’ will require an integrated approach to the planning process, procedure and decision-making process. On the basis of the set tasks, the present report mainly focuses on the development of concepts for the instruments within this process. For the application of Concept 3 these instruments will have to be further developed in greater detail. However, this will not be sufficient. The introduction of Concept 3 will necessitate more than instruments, legislation and procedures. It is a system review which requires a different way of doing and thinking. Entering into the necessary consultations from the start of the process requires a change of attitude in policy makers and politicians. The instruments, legislation and regulations can support an integrated working method, but depend on the application in practice. This change in policy culture and use of integrated environmental planning is a critical success factor for the success of Concept 3 ‘reduced land-use plan with environmental decree’.