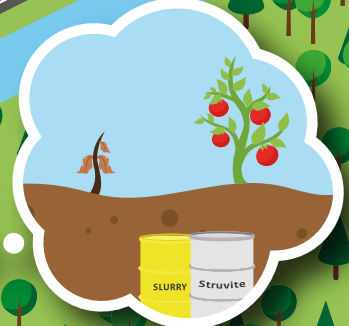
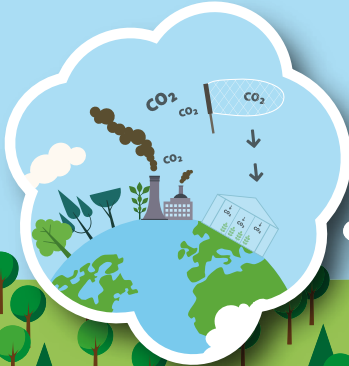
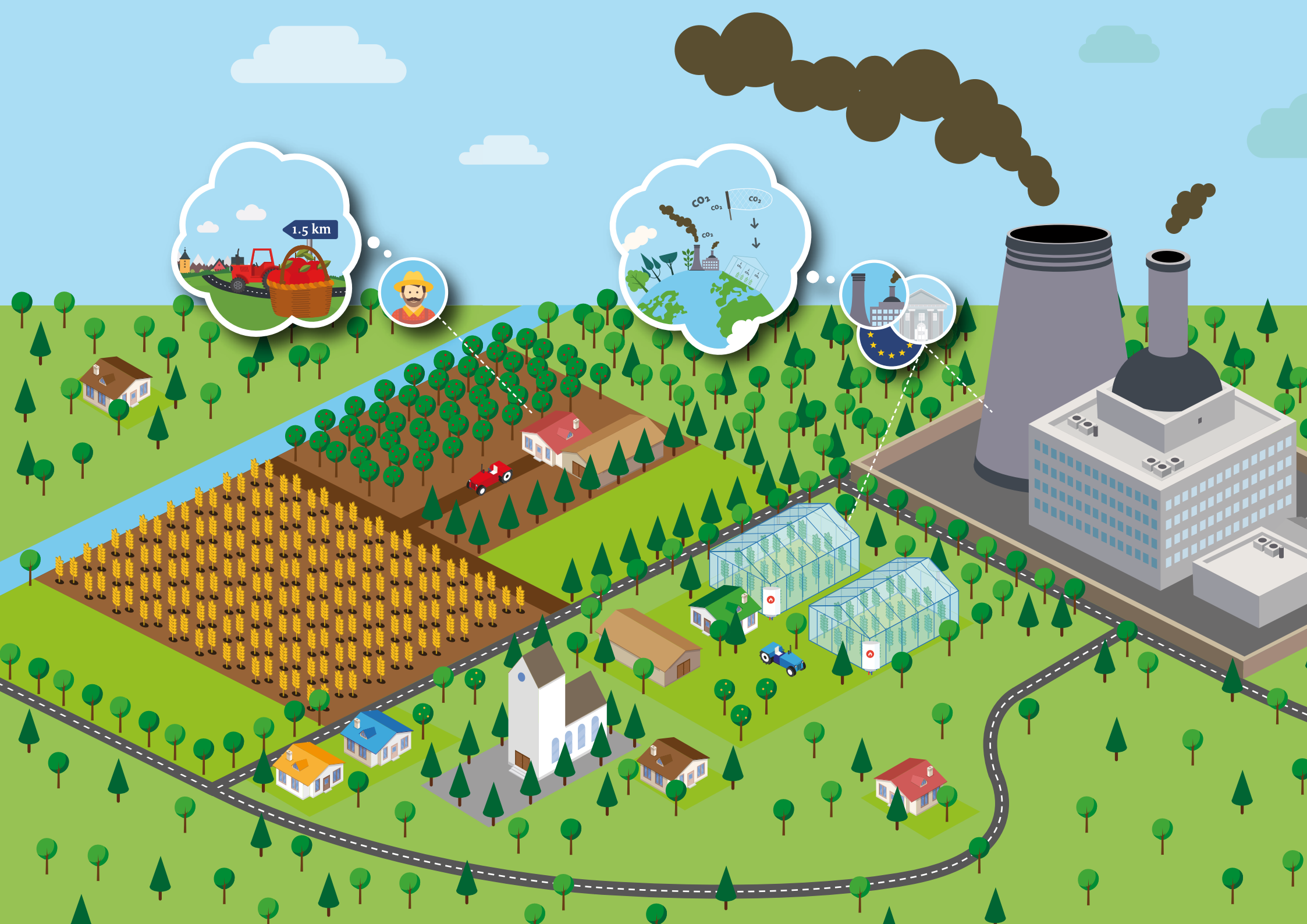


Bridge!

Better EU regulation for local and regional authorities





Bridge!

Better EU regulation for local and regional authorities

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Preface

European regulations have a major effect on the daily practice of local and regional authorities. And, however careful these regulations are developed, occasionally there are unexpected and sometimes undesired side effects in daily practice. Often, these effects are experienced by our municipalities, Provincial authorities and water authorities, precisely because a large and ever-increasing part of the European regulations is implemented within their working area.

What are the main bottlenecks? This question must first be answered, before we can make any suggestions for improvement. Therefore, I have commissioned EU Law and Policy Institute *Europa decentraal* to make an inventory of concrete situations in which local and regional authorities are still struggling with European legislation. Nine examples have been included in this report.

The examples vary widely and it is stirring to read how rules on various issues such as state aid, biodiversity and reuse of waste materials, often directly determine in what manner municipalities and regional authorities deal with policy areas such as housing, area development, subsidy provision, innovation, and even access to government data.

It is evident that there are indeed some bottlenecks. And it is just as evident that this is not always Brussels' fault. The development of the European legislation is a highly complex process, in which not just the European institutions, but also the member states themselves play a major role. The bottom line is that we need to deploy these rules in such a manner that they enable us to find effective solutions to the major societal challenges that we face both in the Netherlands and in Europe as a whole. Lack of clarity, duplications and needless administrative burdens must be avoided and, where needed, counteracted.

The European Commission recognises this need and, partly because of this, the Better Regulation agenda by First Vice-President Frans Timmermans has been drawn up: combating European red tape, both at local and regional level. Therefore, the examples gathered by *Europa decentraal* will surely find their way to the European Commission. The European Urban Agenda, as established by the Dutch Presidency of the European Union in 2016 in the form of the Pact of Amsterdam, will play a key role in this.

Effective and proportional regulations, both at national and European level, constitute one of the Dutch government's priorities. With this study, our country wants to make a contribution to better regulation in the European Union. Therefore, I can highly recommend this report.

The Minister of the Interior and Kingdom Relations,



Dr R.H.A. Plasterk

Introduction

European law and regulations are the final outcome of a complex decision-making process within the European Union. During this process, both European institutions and the member states play a role. Eventually – after the member states have reached a decision in the Council of the European Union, the European Commission and, in many cases, the European Parliament – the many laws and regulations approved at European level, need to be implemented at local and regional level, either directly or indirectly after transposition into the national legislation.

Objectives

To gain more insight into the issues regarding European laws and regulation – i.e. the challenges with which local and regional authorities are confronted in daily practice – the Ministry of the Interior and Kingdom Relations has commissioned Europa decentraal to make an inventory of the various issues that local and regional authorities struggle with when implementing European legislation.

During the first half of 2016, the Netherlands hold the Presidency of the Council of the European Union. The activities in this respect mainly take place in Amsterdam, a city famous for its 1539 bridges. The bridge is taken as a symbol for the inventory that Europa decentraal has prepared: Bridge! This publication gives insight into two sides of the process: on the one hand, the European Union, which is responsible for drafting the regulation and coordinating the decision-making process; and on the other, the local and regional authorities, which are the ones responsible for implementation of EU law in various policy fields in daily practice. Sometimes, the actual impact of these regulations only becomes clear during the implementation phase. Europa decentraal links EU law to its implementation in the field: independent, impartial and solely on the basis of factual information. By acting as a bridge and by making connections, the institute clarifies how European law and regulations actually find their way into regional and local practice.

Local and regional authorities have to cope with European regulations in nearly every policy domain. Just think of such areas as housing, the environment, transport and mobility. In this, they often have to deal with various sets of rules at the same time. However, businesses and citizens have to deal with this just as well. Thus, proper implementation of the European laws and regulations in local practice is of key importance to us all. That is why the roadmap to ‘Better Regulation’, as proposed by the European Commission, is of such major importance to local and regional authorities. And as such, also for the implementation of the European Urban Agenda.

Outcome

Bridge! provides an overview of the trends and developments with respect to questions by local and regional authorities during the period 2003-2015. Apart from a quantitative analysis, Bridge! contains nine concrete examples of issues with which PProvincial authorities, municipalities and water authorities are confronted during the implementation of European law and regulation. These examples are illustrative for the challenges that these authorities have to face during the execution of projects regarding such policy fields as digital transition, circular economy, housing, sustainable land use, urban mobility, energy transition, and air quality.

The results of this inventory can be seen as complementary to earlier studies commissioned by the Dutch Ministry of the Interior and Kingdom Relations and performed by the University of Twente and the University of Leiden, as well as the publication by the Association of the Provinces of the Netherlands (IPO) entitled “Nederlandse provincies voor betere regelgeving” (Dutch provinces for better EU regulation), a publication to which Europa decentraal has also contributed.

The results of Bridge! can be used to provide partnerships under the European Urban Agenda with insights into the effects of European law and regulations in practice. Within this scope,

these partnerships can subsequently make recommendations to the European Commission. Moreover, these results can be used in the European Commission's roadmap to 'Better Regulation', e.g. the REFIT Platform. Finally, this is a public report. The results are freely available and can be used by anyone who is interested.

Scope

Bridge! provides insight into European regulation, exclusively from the point of view of local and regional authorities. Europa decentraal has focussed on specific issues as experienced by municipalities, Provincial authorities and water authorities in the Netherlands as one of the EU member states.

Furthermore, this inventory is solely focused on local and regional issues that are directly related to European law and regulations. This means that issues that directly arise from the way in which European regulations are implemented in the national legislation, have not been included.

Approach with respect to the outcome from local and regional practice

Bridge! has been based on the expertise of Europa decentraal. This EU Law and Policy Institute was founded in 2002 and provides information and advice to local and regional authorities on European law and legislation. The institute's approach is a combination of quantitative and qualitative methodologies. Europa decentraal disposes of a database with over 12,000 questions (and answers) pertaining to Community law, submitted by Provincial authorities, municipalities and water authorities. These questions concern various fields of European law, including state aid, European public procurement, free movement and the Services Directive, competition, data protection and direct effect. For this inventory, the institute's database has

been guiding. Both the quantitative trend analysis and the analysis of questions regarding different policy themes have been carried out on the basis of this database.

During the qualitative phase, nine examples of legal issues from daily practice have been identified and worked out in greater detail. These examples range from the extraction of raw materials from polluted slurry to the realisation of social and commercial housing in a former industrial area of a city. The examples are derived from the database and have been tested by practical experience. They have been further detailed on the basis of the input of field experts working at Provincial authorities, municipalities and water authorities, as well as their umbrella organisations and the departments involved. The input has been collected through various meetings, both bilaterally and in the form of brainstorm sessions and expert meetings. Subsequently, the concepts discussed as well as the relevant legal analyses have been presented once more to the specific experts. During the realisation of Bridge!, a Steering Committee including representatives of the Ministry of the Interior and Kingdom Relations and the umbrella organisations – the Association of Dutch Municipalities (VNG), IPO, the Association of Regional Water Authorities (UvW), the Dutch network of the 4 larger cities (G4) and the Dutch network of the 32 larger municipalities (G32) – have played an advising role.

We have opted to present these issues in the form of fictitious examples. Thus, the confidentiality of the questions by local and regional authorities has been maintained: no information in this report can be traced back to any individual person or authority. Still, the examples are highly representative for the issues that Europa decentraal can derive from its database and network, and, as such, they give an apt picture of everyday practice.

About this report

Part 1 of this report describes nine examples from actual practice, each of which is illustrated with an infographic. In addition to the infographic, a summary of the example is given. In-depth legal argumentation is given in Appendix 2.

Part 2 contains a quantitative trend analysis for the period 2003-2015 and an analysis of issues in European law that bear on the policy themes of the EU Urban Agenda in the years 2014 and 2015.

Appendix 1 contains the legal argumentations relating to the examples. An extensive explanation of how the examples were selected is given in Appendix 2, and Appendix 3 contains a list of relevant literature.

About Europa decentraal

Europa decentraal: European rules in plain language. Such is our knowledge centre's motto. Ever since 2002, the centre's core responsibility is to increase the knowledge and expertise on European law within local and regional authorities. Among other things, this is done by means of the website (www.europadecentraal.nl, >55,000 visitors per month), the legal helpdesk for employees of (local and regional) authorities (>1,000 questions per year), the database with helpdesk questions and answers (>12,000 questions relating to European law) and, in cooperation with 'Huis van de Nederlandse Provincies' (HNP) in Brussels, publication of *De Europese Ster* (appr. 7,000 subscriptions). In addition, we also publish reports and organise meetings. Our centre comprises a team of fifteen employees and has a budget of approximately €1 million.

Stichting kenniscentrum Europa decentraal has been established by the Dutch Ministry of the Interior and Kingdom Relations, the Association of Dutch Municipalities (VNG), the Association of the Provinces of the Netherlands (IPO) en the Association of Regional Water Authorities (UvW).

As from 2007, these parties provide structural funding to the knowledge centre.

If you have any questions to or about the knowledge centre, please do not hesitate to contact us at +31 (0)70 338 1090, or send us an email at info@europadecentraal.nl.

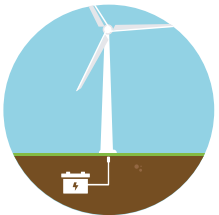
Part 1

Examples from local and regional practice

Idea



Innovation sponsored by the EU



Innovative storage of wind energy

Approach

Coming together for innovation



19 partners/interests

Issue 1

Applying for EU funding



A

DG REGIO

Requirements Interreg
Activities qualify for funding?
Amount of funding



B

DG COMP

Requirements state aid rules
Aid exempted?
Amount of aid



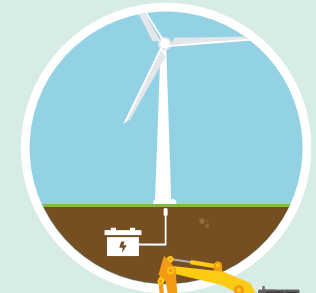
C

DG GROWTH

EU public procurement
Conflicting deadlines

Issue 2

Carrying out activities



1.1 Energy Store

What is the idea behind the project?

Energy Store is a project team with a fine idea. The team comprises municipalities, provincial governments, SMEs as well as a scientific institute in the border regions of Belgium and The Netherlands. The aim of the project is to develop an innovative system for storing wind energy. In order to test the system optimally, a real-life environment needs to be created: a testing ground or so-called living lab.

How does the project fit in with EU policy objectives?

The EU encourages research and innovation by granting subsidies through the European Structural and Investment Funds (ESIF). Energy Store makes a perfect fit with the objectives of ESIF. Therefore, the project team intends to apply for a European subsidy. And this is the start of a highly complex procedure.

What issues may the project team come across in the context of EU regulations?

The fact is that the application for and spending of European funds is not too easy. It involves all kinds of rules and regulations from various Directorates-General.

- Applying for a subsidy under the objectives of ESIF involves many rules in itself. But in addition, one must also assess whether the project complies with the state aid rules.
- As soon as these double procedures have been completed successfully, the project can start.
- However, in the event of public contracts exceeding the European thresholds, the European public procurement rules must be taken into account as well. As a consequence, the partnership runs the risk of missing the project's deadlines for the allocated funds.

All in all, the project team must deal with a very complicated procedure, in which three sets of rules must be complied with. In this, each set of rules has its own criteria, procedures and deadlines.

Idea



Approach

Issue

Local 4 local
Sustainable local entrepreneurship

State aid
Strong EU internal market



1.2 Local4local

What is the idea behind the project?

John is an apple farmer living in the outskirts of town. Each week, his apples are transported to an auction hall some 100 kilometres ahead. Selling his apples in his own town would benefit the environment as well as support the local business community. In other words, directly from the farm to the supermarket around the corner, or to the local market at the square or the restaurant at the canal.

For this reason, the authorities of the province in which John lives, would like to support his Local4local initiative. John is primarily an expert on growing apples, and this is what he spends all his time on. Therefore, he needs help for restructuring his production and distribution processes. Formerly, the entire distribution process was taken care of by the auction hall, but the latter should now be left out. John will have to find new clients in his own town. Nonetheless, his end product must still meet the same requirements. The Provincial authorities would like to grant him a subsidy in order to engage an advisor to help him.

How does the project fit in with EU policy objectives?

The European Commission encourages the marketing of local agricultural products. Local products are better for the environment, because they won't have to come from afar. This contributes to a more sustainable agricultural sector, but also supports the business community in the region. Local and regional authorities encourage local entrepreneurship as well. Farmer John's Local4Local project fits in perfectly with this policy.

In addition, the European Commission is responsible for the European state aid rules for the agricultural sector. However, in practice, the Local4local project turns out to be difficult to implement, even though it fits in well with EU policy.

What issues may the province come across in the context of EU regulations?

The Provincial authorities are obliged to comply with the European state aid rules.

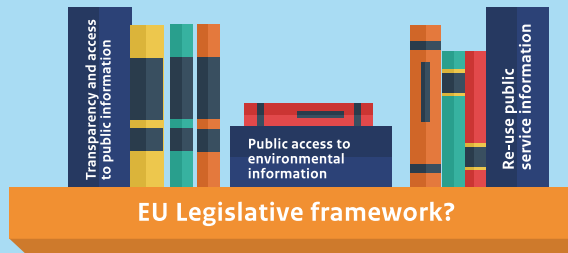
- Pursuant to these rules, the maximum amount of subsidy allowed, amounts to € 1.500,- of agricultural aid. This amount does not cover the costs of hiring an advisor.
- According to the state aid rules, a longer application procedure must be followed as soon as the amount exceeds this threshold. However, a longer procedure implies more red tape and may easily take eighteen months. Therefore, the Provincial authorities decide not to go ahead with the subsidy.

In this case, the regulations do not contribute to achieving the policy objectives.

Idea



Issue I



Issue II



1.3 InstaGreen

What is the idea behind the project?

Martha is an ambitious entrepreneur and owner of an internet company. She hit upon the idea of developing a new app: InstaGreen. With help of this app, people can search for the greenest spot in their environment for recreational purposes. To develop the app, Martha needs various data from the municipality: data on air and water quality, the location of green and parks as well as corresponding facilities (playgrounds, banks, public toilets, etc.). She files a request with the municipality to receive these data in digital form, so she may re-use them for her app.

How does the project fit in with EU policy objectives?

The EU is of the opinion that making available government information contributes to more jobs and economic growth. Therefore, according to the EU, citizens, businesses and research institutes should have easier access to public data from public authorities. In order to encourage this even more, the EU has drawn up and revised the European Directive on the reuse of public sector information.

What issues may the municipality come across in the context of EU regulations? (Part 1)

In this case, the municipality must assess if and how the information can be made available to the entrepreneur.

- To which directive should the municipality turn? As this also concerns environmental information, the Directive on access to environmental information may also apply, in addition to the Directive on the reuse of public sector information.

- Which information may the municipality share with the entrepreneur? After all, not all information may be shared just like that. In order to properly assess this, one should turn to European rules regarding privacy, to regulations on database rights, copyrights and intellectual property, as well as to competition rules.

What issues may the municipality come across in the context of EU regulations? (Part 2)

After the municipality has assessed which information can be shared and whether all aforementioned requirements have been met, it should also make all efforts to furnish the information to the entrepreneur in a reusable format.

- However, not all information is available in a digital and reusable format. This implies that the municipality may incur extra expenses (staff and expertise).
- Therefore, the municipality would like to require the entrepreneur to pay some compensation. In that case, however, the question rises whether the municipality can charge reasonable costs (under the EU Directive on public access to environmental information) or only marginal costs (under the EU Directive on the reuse of public sector information).
- The interpretation of these concepts may vary considerably.

The municipality has to deal with at least six sets of European legislation. Furthermore, the municipality is in need of more guidance in order to be able to determine the exact costs.

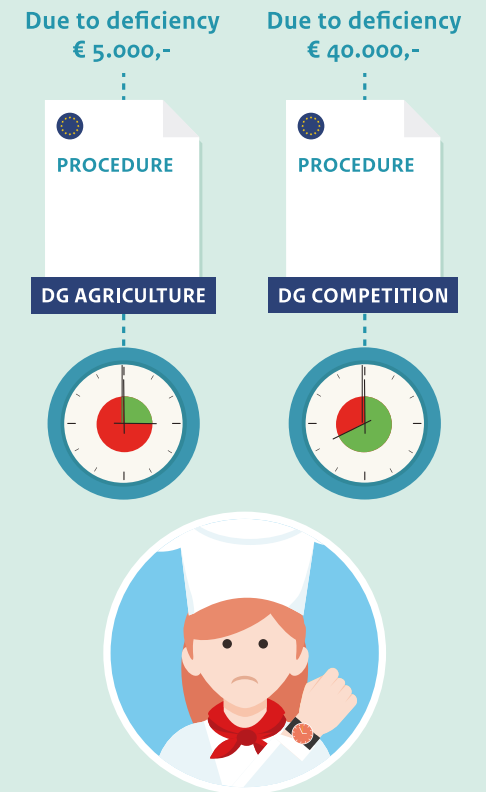
Idea



Approach



Issue



1.4 Small on small

What is the idea behind the project?

Francine is owner of an organic-food restaurant called “Logisch”. Nearby her restaurant, there is an old unoccupied building, in which she would like to launch a second restaurant. On the roof of this new building, she would be able to grow her own vegetables, fruit and herbs. The municipality is very enthusiastic as well. The municipality encourages local entrepreneurship and sustainability, and because of the high costs and the wish to support local entrepreneurship and sustainability, the municipality is prepared to make a financial contribution. For the renovation of the building, Francine would need an amount of approximately € 240.000,- and for the roof garden another € 20.000,-.

How does the project fit in with EU policy objectives?

In order to improve the air quality of cities/towns, the EU encourages, among other things, the sustainability of cities/towns by greening and sustainable land use. Francine’s project contributes to this. In addition, it is a project by a small entrepreneur and, as such, an excellent example of local entrepreneurship, which is also supported by the European Union.

What issues may the municipality come across in the context of EU regulations? (Part 1)

Because the municipality wants to make a financial contribution, it is obliged to comply with the European state aid rules.

- In 2014, the state aid rules have been revised, as a result of which it has become much easier in many situations to grant a relatively small amount of aid. However, in practice, there are still quite some limitations.

- In this case, the amount that Francine needs for the building’s renovation is just above the European threshold under which it is not necessary to follow any procedures: the so-called de minimis threshold of € 200.000,-.
- The municipality will still have to subject itself to a state aid procedure.

What issues may the municipality come across in the context of EU regulations? (Part 2)

Furthermore, according to EU legislation, Francine is considered as a farmer and not as a ‘regular’ undertaking, as she intends to grow agricultural products.

- To this activity, other state aid rules for the agricultural sector apply, which are different and, indeed, more strict. The de minimis threshold of € 15.000,- for this sector is lower.
- Consequently, the amount that Francine needs for her roof garden also exceeds the de minimis threshold.
- Apart from the state aid procedure for the building’s renovation (see Part 1), the municipality must also follow an additional procedure for the construction of the agricultural garden.

Therefore, as both de minimis thresholds are exceeded, the municipality must follow two different state aid procedures, both having its own criteria and deadlines.

Idea



Issue I



Issue II



1.5 Urban Habitats

What is the idea behind the project?

In a municipality, there is an industrial area with a high vacancy rate and buildings in a poor condition. The municipality would like a project developer to convert these buildings into commercial owner-occupied homes and social housing. During the period of vacancy, the protected common pipistrelle has taken up possession of this industrial area.

How does the project fit in with EU policy objectives?

The common pipistrelle is a protected species and falls under the protection of the European Habitats Directive. This directive is one of the instruments by which the EU wants to protect its biodiversity. This type of bat comes under the directive's strictest level of protection.

What issues may the municipality come across in the context of EU regulations? (Part 1)

The pipistrelle enjoys a high level of protection under the European Habitats Directive, but can nonetheless be regarded as a common species in certain Member States.

Before the project can be launched, the possible consequences for the common pipistrelle must be assessed.

- According to the European legislation, both parties (the municipality and the project developer) must make an assessment of the possible impacts. Result: two research reports.
- In this case, the results of the two reports are contradictory: according to the municipality, the consequences for the bat will not be significant, whereas the project developer maintains there may indeed be a significant impact.

- Because one of the parties has concluded that there may indeed be significant consequences, the Habitats Directive obliges the municipality to search for alternative or compensating measures – which appear not to exist.

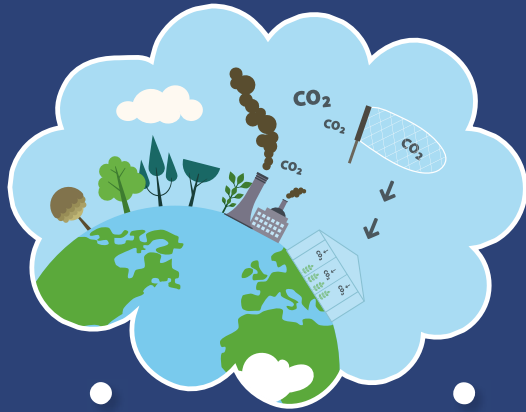
What issues may the municipality come across in the context of EU regulations? (Part 2)

In this case, the public interest is considerable: if nothing is done, the area's deterioration will continue and the problems will only increase. Nonetheless, the municipality has one more chance to proceed with the project. The fact is that the Habitats Directive provides for a possibility to proceed with the project in the event of "imperative reasons of overriding public interest".

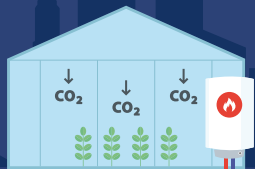
- Still, the municipality finds it difficult to prove that the project meets this requirement. Because the development project is of a mixed nature, it is not clear whether this qualification would actually apply to the project. An even more complicating factor is the fact that the above will only become clear once a court decision has been reached.
- There is no concrete substantiation of the concept of "imperative reasons of overriding public interest". The Habitats Directive only refers to principles derived from the European regulations on free movement as well as from the state aid rules regarding services of general economic interest (SGEI). These principles are, however, applicable and drafted in the context of the internal market rules and are not (directly) linked with environmental interests.

This means that, as a result of the above, the principle of "imperative reasons of overriding public interest" is hardly ever applied in practice.

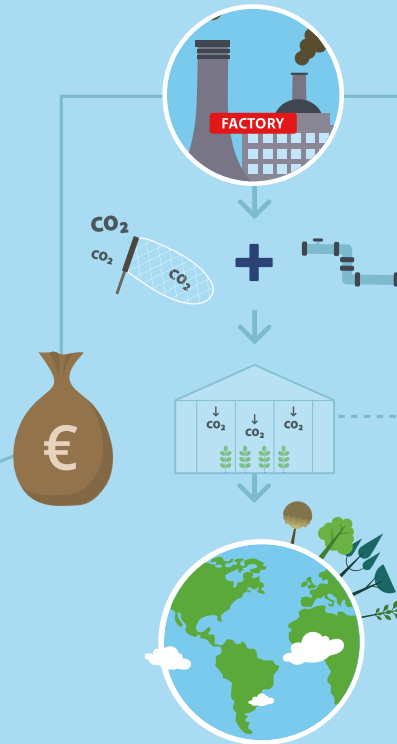
Idea



Municipality



Approach



Indirect environmental impact

Issue

Result indirect environmental impact



In case of direct environmental impact



1.6 Growing Power

What is the idea behind the project?

A large factory on the outskirts of town emits a large amount of CO₂ during its production processes. The factory is looking for possibilities to reduce its CO₂ emission. There are possibilities for reuse in horticulture: the CO₂ could e.g. be used to stimulate the growth of plants. In that case, greenhouses do not have to make use of natural gas, which results in a substantial reduction of CO₂.

In order to be able to deliver the waste CO₂ to the greenhouse horticulture business, the CO₂ must first be captured and processed. Furthermore, a transport pipeline needs to be constructed, through which the plant's CO₂ can be transported to the greenhouse horticulture business.

How does the project fit in with EU policy objectives?

Reduction of the CO₂ emission by 20% compared to 1990 is part of the Europe 2020 strategy. For 2030, the aim is to reduce the CO₂ emission by at least 40%. In 2050, the CO₂ emission should be reduced by 80%. To achieve this, a CO₂ emissions trading system – under the name of EU-ETS – has been implemented at EU level for a number of sectors.

Another possibility to reduce the emission of CO₂ might be to reuse CO₂. This is a relatively new approach, which is still quite expensive. Therefore, financial aid from the government is often needed to get initiatives of this type off the ground. In the event the authorities want to support projects that contribute to the reduction of CO₂, they must comply with the European state aid rules. The EU has introduced an exemption for environmental aid, as a consequence of which it should be easier to grant such aid.

What issues may the municipality come across in the context of EU regulations?

The municipality would very much like to apply the state aid exception with respect to the environment.

- However, aid is only allowed if the environmental impact to be achieved thanks to the subsidy, is realised by the party receiving the aid. In this situation, this is not the case: after all, the factory itself will still produce CO₂. The ultimate environmental impact will be achieved by the greenhouses, which would no longer consume natural gas. In addition, aid granted with respect to infrastructure does not fall within the scope of the environmental state aid rules. Therefore, no use can be made of the environmental exceptions.
- This means that the municipality will have to follow a more burdensome state aid procedure for the project, even though this project may eventually lead to a drastic reduction of the CO₂ emission. This consumes both time and money.
- For the factory too, the threshold for carrying out the project has become higher, as it will take a long time before it is clear whether the project can be started and funding can be arranged.
- Finally, this means that the factory will have to wait longer before it can be sure funding is a feasible option.

Idea



Municipality

Issue I

○ No market participants

EU flag icon
✓ Notification
✗ Exemption
DG COMPETITION

EU flag icon
✗ Broadband
DG AGRICULTURE

EU flag icon
✗ Exemption
✓ Notification
DG COMPETITION

Issue II

● Various market participants ○ One market participant

EU flag icon
✗ Exemption
✓ Notification
DG COMPETITION

EU flag icon
✗ Exemption
✓ Notification
DG COMPETITION

1.7 Access2Fiber

What is the idea behind the project?

The Provincial authorities wish to encourage the roll-out of a fibre network by granting a subsidy. Thus, they intend to provide a fast internet connection to citizens and businesses in outside areas. From a financial perspective, the roll-out of a broadband infrastructure in outside areas is not overly attractive to market participants, primarily because the returns fall short because of the very limited number of connections.

The Provincial authorities have had to facilitate a great number of initiatives, and now they want to invest in connecting rural areas to the Internet. In some cases, subsidies are also needed in the province's densely populated, urban areas, in order to modernise the existing networks and increase the internet speed (e.g. through the roll-out of a fibre network).

How does the project fit in with EU policy objectives?

In the world of quickly developing technology and state-of-the-art digital services, access to high-speed internet has become indispensable. This concerns both citizens and companies. However, high-speed internet is still not universally available; in particular, the outside areas are lagging behind. The European Union wants to achieve payable access to (ultra) high-speed internet for all citizens and companies throughout Europe. In the more peripheral areas, the roll-out of a broadband infrastructure is not commercially attractive to the market. E.g. through the European Fund for Strategic Investments (EFSI), the EU makes financial funds available for the roll-out of (ultra) high-speed internet as well as other digital networks, also in outside areas.

What issues may the province come across in the context of EU regulations?

The Provincial authorities may choose to offer financial stimuli to market participants in order to connect business and citizens. Because the authorities opt for granting a subsidy, the state

aid rules must be complied with in order to limit unfair conditions of competition. With the modernisation of the state aid package, the European Commission has introduced a new exemption for broadband infrastructure. The purpose of this is that the aid can be provided more easily without the need of following burdensome procedures. However, in practice, the Provincial authorities must still meet relatively strict conditions.

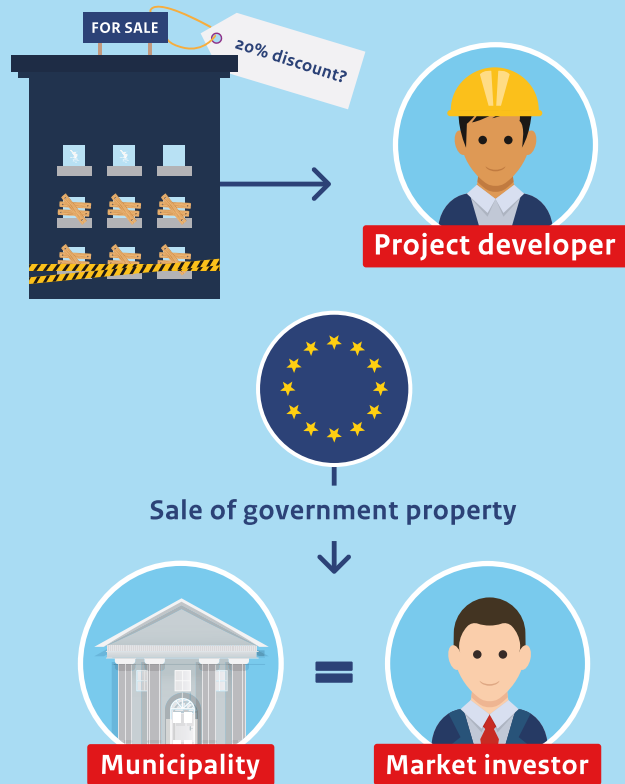
- In order to be able to make use of the exemption for broadband infrastructure, the authorities must first establish, on the basis of a public consultation, whether market failure can be said to occur in the entire area. In other words: is there a broadband infrastructure present and does the market show interest to roll out infrastructure in the future? If this is not the case, a lighter procedure will suffice, as a consequence of which it is easier for the authorities to grant a subsidy.
- The outcome of the consultation is a 'patchwork' within the province's entire territory: market participants indicate that they would like to roll out infrastructure for some areas, and for other areas not. As a result, the entire area will consist of different subareas, each having its own status. For each area, the Provincial authorities will have to apply different conditions.
- The authorities will have to deal with three types of areas: (1) white areas with no infrastructure at all and for which the market neither has any plans; (2) grey areas in which only one market participant is active and in which no other networks will probably be developed; (3) black areas in which various market participants are active.

In the white areas, a broadband infrastructure can be rolled out relatively easy. However, in the neighbouring grey and black areas, the roll-out needs to be postponed, because the Provincial authorities must first submit a request for approval to the European Commission. To this purpose, the province must follow a lengthy and administratively burdensome state aid procedure. This interferes with a comprehensive approach to the roll-out of broadband throughout the entire (rural) area.

Idea



Approach



Issue



1.8 Government means business

What is the idea behind the project?

In a deprived district of a city, there is a vacant building belonging to the Municipal Environment Department. The municipality still pays considerably high charges for the building's maintenance and security. In order to enhance the district's standing and quality of life, the municipality intends to sell the building and have it converted into an apartment complex. The idea is that the complex should contain both social housing apartments and commercial owner-occupied and rented apartments. However, the project is unattractive to project developers: because of the building's location and projected development plan, the project has an operating shortfall.

It appears that there is only one market participant interested in the project, a major project developer operating under the name of Urban Life Company. The developer is not able to fund the operating shortfall itself. Therefore, the municipality would like to provide financial aid to the project developer, in order to still realise the project.

How does the project fit in with EU policy objectives?

Currently, there is no general housing policy drawn up at EU level. Nonetheless, there are various ongoing initiatives regarding the promotion and affordability of social housing within Europe. This way, research after better, sustainable and affordable social housing is encouraged by means of the European Horizon 2020 project. Moreover, there are European funds, such as Interreg, the European Regional Development Fund (ERDF) and the European Asylum, Migration and Integration Fund (AMIF), which provide financial aid for projects with respect to (the promotion of) social housing and the improvement of life quality.

What issues may the municipality come across in the context of EU regulations?

For municipalities and other local and regional authorities, it is not always that easy to realise social housing projects in deprived urban districts. Apart from the fact that such projects are less attractive to market participants in financial terms, the European rules are not always that supportive either.

- Within the context of the European state aid rules, the concept of market conformity plays a central role. According to these state aid rules, the municipality's building should be sold on an arm's length basis, in order to prevent illegal state aid. Nonetheless, it is often hard to sell buildings in deprived areas at a price that is in keeping with market rates, as a result of which the entire district deteriorates.
- Within the context of these state aid rules, the municipality has only little space to give a discount on a building's price, so it has to try and find an alternative which is not in contradiction with the state aid rules.
- However, the state aid rules provide for little possibilities to set up easily and quickly a mix of social and commercial housing which is actually state aid proof. For the commercial part of the project, the municipality must still receive approval from the European Commission and follow a lengthy and administratively burdensome application procedure. The outcome is unclear.

Therefore, for area development projects, there can be a field of tension between the requirements of operating in line with market conditions on the one hand and the municipality's public interests on the other. Market participants are normally not led by such interests and considerations. This concerns particularly the valuation regarding the purchase and sale of buildings and land. As a result, it is quite hard for municipalities and other local and regional authorities to realise area developments projects in conformity with the state aid rules on the one hand, and to pursue public interests such as the district's life quality and social objectives on the other.

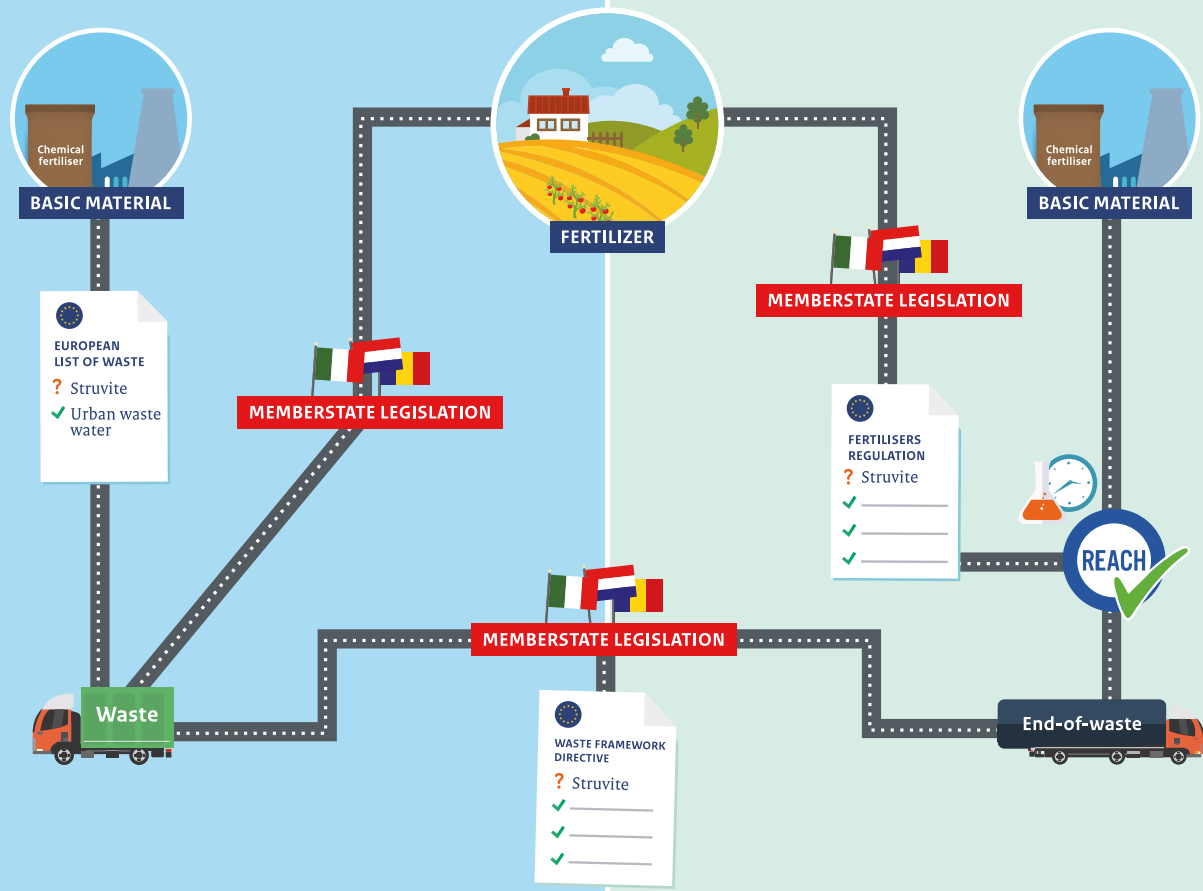
Idea



SLURRY SLURRY

District water authority

Issue I



Issue II

1.9 What-a-waste!

What is the idea behind the project?

The water authority wants to deploy a new technology to extract struvite from waste water. Struvite is a substance that can be used as an agricultural fertilizer, either directly on the land or as a commodity for chemical fertilizer. It is the district water authority's intention to sell the struvite directly to farmers, as well as to a factory that turns it into fertilizer. In this way, the district water authority can still reuse the slurry.

How does the project fit in with EU policy objectives?

The EU wants to encourage the circular economy. This means that waste materials are recycled as a commodity for new products or energy. Materials that are waste for some, can be commodities for others: from food scraps and car tyres, to polluted slurry.

Therefore, the Waste Framework Directive includes a list of waste materials that may be considered, under certain circumstances, as new commodities, also referred to as end-of-waste materials. Such materials can easily be reused, marketed, transported and stored.

What issues may the water authority come across in the context of EU regulations?

In order to establish whether and to what extent struvite can be marketed, the district water authority has turned to the European regulations on waste, on fertilizers and on chemicals.

The Waste Framework Directive includes a list of waste materials that may be reused. Also referred to as: End-of-Waste materials. Struvite has not yet been included on this list. Now the district water authority must turn to national legislation.

- If the member state decides struvite is waste, then very strict regulations come into play. In most member states, this means that struvite may not be applied directly on land. To determine whether struvite can be used as basic material for chemical fertilizer, the district water authority must check the European List of Waste. Again, the status of struvite is unclear. Therefore it falls under a strict regime.
- If the member state determines struvite to be end-of-waste, then it must pass the REACH requirements: a costly and time consuming process. Furthermore, struvite is not yet included in the European Fertilisers Regulation. Therefore, if the goal is to apply the material directly on the land, the district water authority must, once again, turn to the national Legislation.

This differs throughout EU Member States, which interferes with the marketing and application of innovative fertilizers. The same applies to other waste materials, which may be reused in the future. At this moment, EU regulations do not always contribute to achieving EU policy objectives on the circular economy.

Part 2

Trends and themes

2.1 European regulation in urban practice: 2003-2015

In Part 1 of Bridge!, we have presented nine examples of issues that local and regional authorities have to deal with when implementing European legislation. The examples have been derived from the institute's database, which has been the point of departure of this inventory. In this database, Europa decentraal has registered approximately 12.000 unique questions, chiefly from local and regional authorities, in the field of European law and regulation (along with the relevant answers). Apart from its helpdesk, Europa decentraal also has other ways of informing local and regional authorities, e.g. through its weekly newsletter De Europese Ster and its website.

However, what information about European law and regulations do these local and regional authorities specifically need? How has this need for information developed in the Netherlands from 2003 till 2016? And what information do these authorities need in the future? In Part 2 of Bridge!, we will further examine these questions. This part contains a quantitative analysis of the information requirements of local and regional authorities, as identified on the basis of the data collected in the Europa decentraal database, the subscriptions to the newsletter De Europese Ster and the number of visitors to the institute's website.

Information and advice on European policy and regulation to local and regional authorities

It is Europa decentraal's aim to increase the knowledge of local and regional authorities on the implementation of European law and policy and, as such, to help these authorities to come to a better interpretation of it. The institute's core responsibility is to inform and advise local and regional authorities on European law and regulation, as well as to point out and provide insight into specific matters with respect to these regulations. In this way, Europa decentraal builds a bridge between, on the one hand, European law and policy and, on the other, the

implementation and elaboration of it at local and regional level.

In order to increase the knowledge and awareness of Europe, Europa decentraal offers various services, including a website, a newsletter under the name of De Europese Ster, information meetings and a legal helpdesk, which also includes the so-called 'Signaleringsloket' (a counter for pointing out specific issues):

- Information on European law and policy is an important part of the institute's services. Each year, local and regional authorities can gather information at dozens of meetings and presentations. These may be organised by the institute itself or in consultation with other parties, often at the request of some authorities themselves, such as the associations of local and regional authorities and the Ministry of the Interior and Kingdom Relations.
- The website (www.europadecentraal.nl) is one of Europa decentraal's central services: on its website, the institute can share its knowledge and make it available to all. The website can be seen as a 'library' in which local and regional authorities can find factual and impartial information about all possible policy fields with respect to European law: varying from public procurement to culture, sports and youth, and from state aid to legal affairs, freedom and security.
- In addition, Europa decentraal informs some 7,000 subscribers of the most important European developments through its newsletter De Europese Ster. Developments which may affect municipalities, provinces and water authorities, are translated into the local and regional practice. Ever since 2003, Europa decentraal sends this newsletter on a weekly basis, in cooperation with 'Huis van de Nederlandse Provincies' (HNP) in Brussels.
- Standard items of De Europese Ster and the website include the 'Question of the week' and 'EUrest'. On the basis of this weekly question from daily practice, Europa decentraal is able to answer the most frequent questions submitted to the helpdesk, or else questions that might be significant to local and regional authorities at that specific moment, or that deserve extra attention because of current affairs. In the monthly feature EUrest, the

latest developments in European case law are identified for local and regional authorities. In this feature, rulings from the European Court of Justice are explained, and the relevant judgment's impact on policy matters of local and regional authorities is pursued in greater depth.

- All staff members of municipalities, Provincial authorities and water authorities, as well as all staff members of umbrella organisations and ministries, can request free information and advice on European matters and their impact in local or regional practice at the (legal) helpdesk. On working days, the experts of Europa decentraal are available by telephone between 9 and 12 am. Furthermore, authorities can submit written questions 24/7 by means of the form on the website. Finally, more and more questions are asked orally during the various meetings and workshops at which the legal advisers of Europa decentraal give presentations.
- The Europa decentraal helpdesk receives questions about the application of European legislation and policy on a daily basis. The institute answers most of these questions by means of an explanation of the interpretation of the relevant regulation or policy. Every so often, the solution to a certain issue may be more complicated, e.g. in the event that the relevant European regulations appear to be unfeasible in the local and regional practice. In 2009, Europa decentraal has established the so-called 'Signaleringsloket' (a counter for pointing out specific issues) following an initiative by the EP member Corbey and member of the Provincial Executive Verdaas. Ever since, such bottlenecks have been registered separately in the institute's database. The activities in this respect are performed in consultation with the Association of Dutch Municipalities (VNG), the Association of Regional Water Authorities (UvW), the Association of the Provinces of the Netherlands (IPO) and the Ministry of the Interior and Kingdom Relations. Europa decentraal provides regular feedback to both the umbrella organisations and the Dutch Ministry of the Interior and Kingdom Relations on the various signals identified by the institute. Where necessary and requested, these signals can be followed by further analysis or research.

In addition, Europa decentraal provides services with respect to specific policy areas:

- Europa decentraal may e.g. receive questions from local and regional authorities on the application and spending of European subsidies in accordance with the European state aid and public procurement rules. Now the new financing period 2014-2020 has commenced, these questions have become even more pressing. In order to support authorities even better with respect to these issues, the institute offers its web file 'Europaproof besteden van Europese subsidies' (Europe-proof spending of European subsidies).

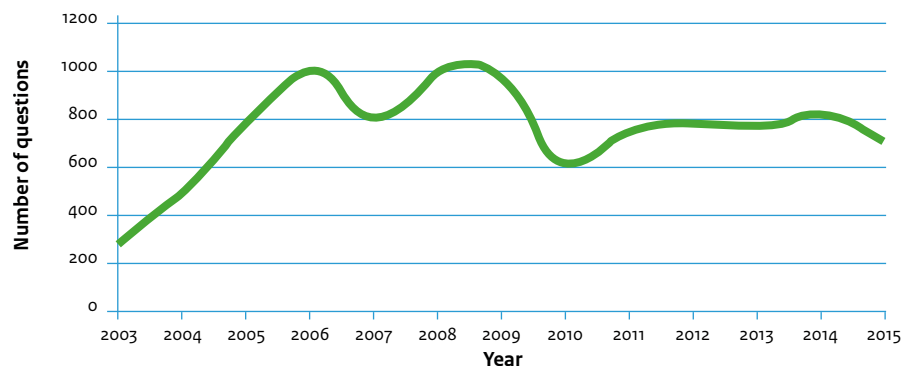
- In the field of state aid, the institute has supported the State Aid Coordination Point of the Ministry of the Interior and Kingdom Relations since 2013 in the execution of Coordination Point's tasks with respect to state aid reports and notifications, as well as its information role in terms of providing guidance.
- In order to support local and regional authorities to find the correct Common Procurement Vocabulary codes (CPV codes) for the public procurement of products, services and works, the institute also provides for a search engine.
- By means of the so-called 'Klimaat-, Energie en MilieEUverkenner' (Climate, energy and environmental explorer), the institute provides a quarterly update of the latest information on new European regulation in these fields.

Developments regarding helpdesk questions

Since 2002, all staff members of Dutch ministries, municipalities, Provincial authorities, water authorities and local and regional partnerships can ask questions to the Europa decentraal helpdesk. These questions have been gathered in the institute's database. Over the last fourteen years, the total number of questions has run up to over 12.000. Each year some 1.000 questions are asked and answered. Currently, approximately one third of these questions is asked at meetings and answered at the spot, as was the case at meetings specifically on the EU General Data Protection Regulation. This research has been based on the entire body of questions from the database, which were answered in writing. The total amount of these questions is approximately 10.000. For more information on how this number is composed, please refer to Annex 2.

Figure 1 shows how the number of questions developed during the period starting 2003 up to and including 31 December 2015. In the years following the institute's establishment, the number of questions primarily increased: in 2003, over 300 questions were answered, whereas in 2006 nearly thousand questions were dealt with. The sharp increase in the number of questions up till 2006 as well as the fact that the figure has remained relatively stable since then, points at a persistent need for information among local and regional authorities. Europa decentraal has the capacity to answer roughly 1.000 helpdesk questions per year. During 2007 and 2008, in view of the sharp increase in the number of questions, the institute has made the necessary efforts to keep this figure at a maximum of 1.000 per year, mainly because of the available personnel capacity. This was done by making more information

Figure 1. Development of the number of questions 2003-2015



available through other products and services, e.g. oral answers by the telephone help desk and anticipating questions by means of providing information at the website and during meetings, and through active use of the instrument of the ‘question from daily practice’. As a result, the annual number of questions has been stabilised at some 1.000 per year. After a short, explicable regression in 2010, a new balance was found at approximately 1.000 questions per year; on average, some 200 to 300 of these questions are answered during meetings.

Over the years, the nature of the answers asked to the helpdesk has changed. The questions have become more and more complex. This shows that (local and regional) authorities are more and more aware of European regulation, but, simultaneously, also more in need of a deepening of insight. In addition, the helpdesk has also seen an increase in the number of questions about European policy. The fact that much basic information on such matters is already offered by the website and the newsletter, plays an important role in this. On the website, more and more information on European law and policy is available; this information is also continuously updated. Therefore, to a large extent, the institute’s target group can find the answers to their questions on the website. The fact that the institute still receives an average of 1.000 questions per year, clearly indicates the broadened and deepened nature of the questioning. After all, the basis information is already available via the institute’s website. More and more often, the questioners would like to see a substantiation or individualisation of the information with respect to their own case. In its turn, this leads to even more signals about European law and policy.

Development of the number of subscribers to De Europese Ster and visitors of the website

The fact that local and regional authorities indeed make more use of the other services and products of Europa decentraal, can also be derived from the increased number of web visitors and the increased number of subscriptions to the digital newsletter De Europese Ster. Figure 2 gives an overview of how the number of subscriptions to the weekly newsletter has developed. The number of subscriptions to De Europese Ster in 2015 has increased fourfold, compared to 2003.

Figure 3 indicates that the number of visitors to the website has also increased. In 2015, the number of visitors reached a provisional peak of over 50,000 unique visitors to the website. On average, the website was visited in 2015 by over 41,000 unique visitors. This upward trend has continued in the third quarter of 2016.

Figure 2. Development of the number of subscribers to De Europese Ster

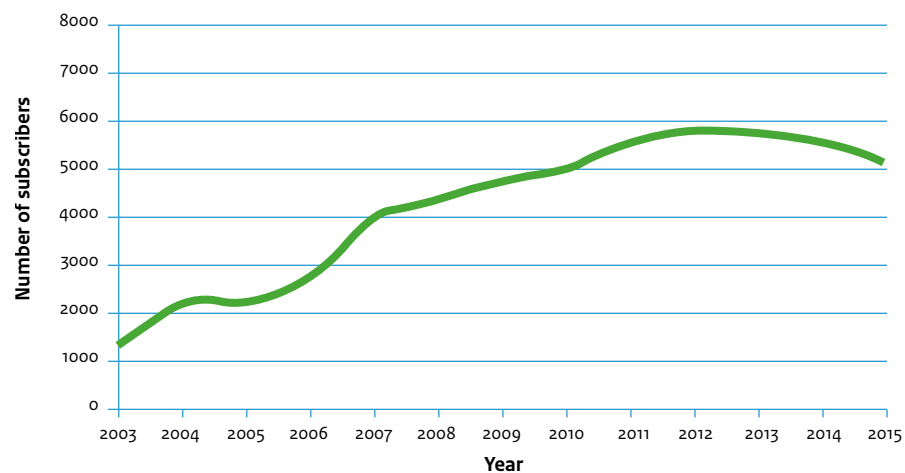
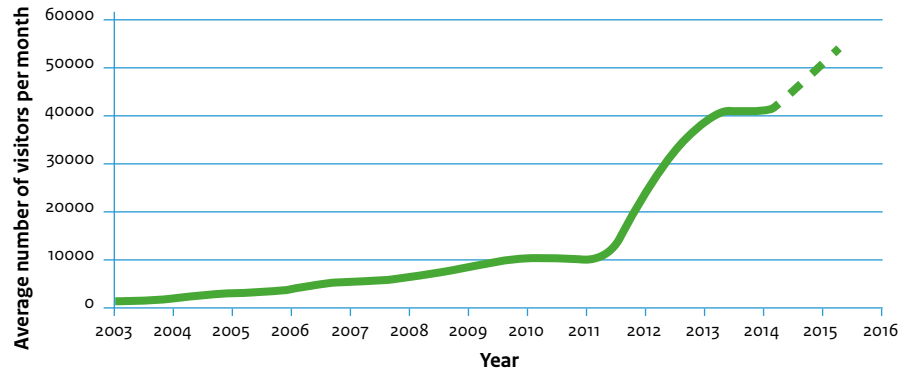


Figure 3. Development of the number of unique website visitors



Information requirements regarding EU law and policy at local and regional level

What information about European law and regulations do Dutch local and regional authorities specifically need? How has this need for information developed over the years? Figures 4 until 6 give a specification of the questions into seventeen different policy domains. Europa decentraal provides information on all policy fields related to European law, but has observed that, in actual practice, most questions are asked about the internal market rules, i.e. the European public procurement and state aid rules, the European competition legislation, the Services Directive and service of general interest (SGI). Throughout the entire research period (2003-2015), most questions have been asked about European public procurement law (Figure 4). Over half of the questions is focused on this topic. However, the number of questions on state aid has strongly increased over the years. Over the period 2010-2015, the number of questions on state aid is nearly as high as the number of questions on public procurement. Figure 6 shows that there were almost equal numbers of state aid and procurement questions. In 2014, the number of questions about state aid exceeded the number of questions about public procurement.

During the research period, a few themes accounted for less than 2% of the total number of questions. This concerns e.g. such policy fields as Transport, Culture, education and youth and

Employment and social affairs. These themes come up indirectly in the context of questions about the internal market rules; therefore, they have also been registered as such. This may concern questions about e.g. the public procurement of public transport services or subsidies for a cultural institute.

Figure 4. Number of questions broken down by policy domain (2003-2015) (N-9697)

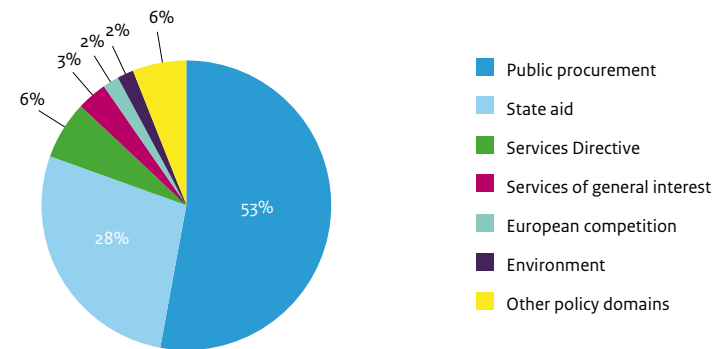


Figure 5. Number of questions broken down by policy domain (2003-2010) (N-5373)

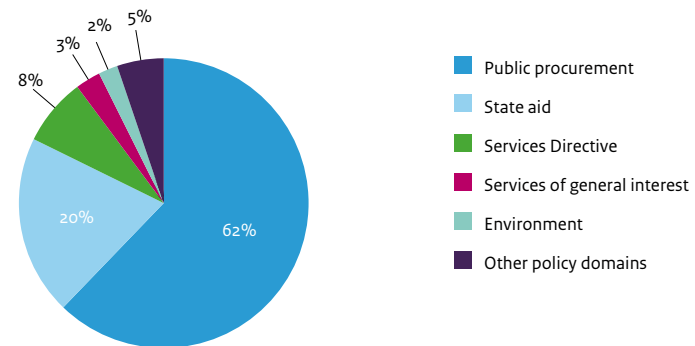
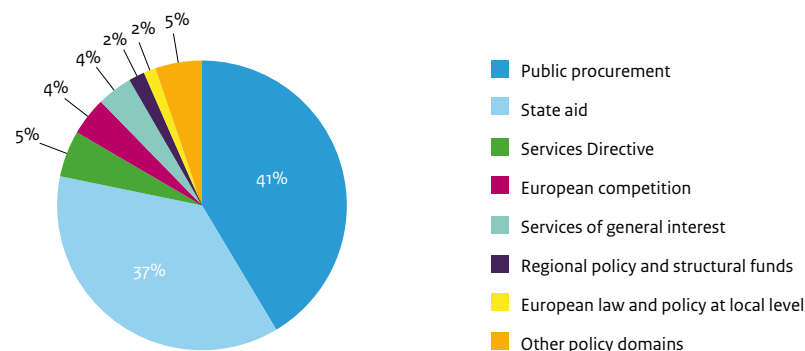


Figure 6. Number of questions broken down by policy domain (2010-2015) (N-4424)



The fact that so much questions are asked about internal market rules, may be explained by the fact that local and regional authorities in the Netherlands are often confronted by these rules in practice. The state aid rules have a direct effect: these rules are not laid down in directives, but in regulations, such as the General Block Exemption Regulation (GBER). This means that these rules need not be transposed first into national legislation, but that they have to be implemented directly by local and regional authorities. It is also possible to ask the national court to ascertain whether a state aid rule complies with the provisions of the GBER. As regards procurement rules, a crucial element may be that local and regional authorities in the Netherlands constitute the largest group of contracting authorities within the entire public sector. As a result, they are also directly confronted with the implementation of the European public procurement rules. Moreover, the internal market rules often concern complex and extensive regulation and not all local and regional authorities dispose of sufficient knowledge in this respect. Therefore, as a shared-service centre, Europa decentraal may offer added value exactly in these fields of legislation and may perform a bridging role par excellence between EU law and policy on the one hand and the implementation thereof in every-day practice on the other.

It is noteworthy that the institute's helpdesk receives less questions from local and regional authorities on such fields as transport, culture, climate, energy and the environment. Still, Europa decentraal may advise authorities about these topics in different ways, e.g. in the

field of environmental legislation, through the aforementioned 'MiliEUverkenner' or through articles in the newsletter, through de website and through practical questions. Figures indicate that these media are frequently consulted, e.g. with respect to practical questions: Is a municipality allowed to centrally register its problems with the collection of parking fines from tourists from other EU member states? Is there any European legislation on the felling of trees? And: Is a residence requirement possible in the event of a subsidy for music lessons?

A large part of, among other things, the European environmental legislation has already been transposed into national legislation; therefore, it is 'more automatically' applied by local and regional authorities than the relatively 'new' internal market rules. Consequently, many local and regional authorities have quite some internal expertise in the field of European environmental law.

Developments of EU law reflected in the development of the number of questions

The fact that a large part of the questions relates to European public procurement law, can also be explained on the basis of the developments in this branch of law. Both recent developments and various legislative processes that have been going on in the field of public procurement, have resulted in a continuous flow of questions on the application of these rules in the local and regional practice. The European public procurement directives have been revised in 2004. The directives were transposed into Dutch legislation by means of two decrees: the Public Procurement (Tendering Rules) Decree ('Besluit aanbestedingsregels overheidsopdrachten (Bao)') and the Tendering (Special Sectors) Decree ('Besluit aanbestedingen speciale sectoren (Bass)'). This changed in 2013, when the Dutch Public Procurement Act 2012 ('Aanbestedingswet 2012') came into effect and replaced the aforementioned decrees. In 2014, the European public procurement directives have been revised once more. Again, this has resulted in many questions.

Apart from European public procurement, a large part of the questions relates to European state aid rules. As described above, the number of questions on state aid has strongly increased. This increase parallels a number of developments in the field of state aid law. In the light of the financial crisis in Europe, local and regional authorities increasingly understood the importance of applying the state aid rules. In addition, the coming into force of the GBER in 2008 led to more questions on state aid. In 2012, the European Commission commenced with

the modernisation of the state aid regime (State Aid Modernisation, SAM). As a consequence of this modernisation process, the new exemption regulations have come into force in 2014. Various procedures have changed. This has resulted in an increase of the number of questions about state aid as well.

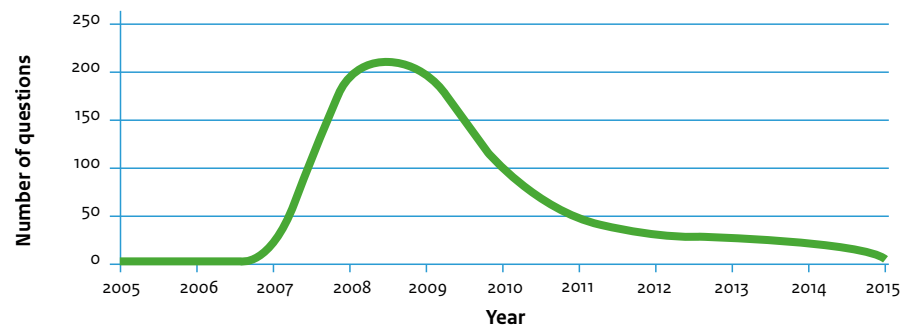
Therefore, the data in the database of Europa decentraal seem to suggest that the need for information among local and regional authorities increases as soon as changes in the European legislation are introduced and a (national) implementation deadline is in sight. The coming into force of the Services Directive, which was transposed into national legislation in 2009, is a fine example of this. Figure 7 provides an overview of the development of the number of questions on this issue.

The Services Directive came into force at the end of 2006. In 2007, Europa decentraal observed a sudden, strong increase in the number of questions in this field. The Services Directive had to be implemented in the Netherlands before the end of 2009. This had consequences for local and regional authorities, which were forced to screen their regulations for conformity with the new European directive. This explains the relatively large number of questions during the period between the directive's coming into force (end of 2006) and the directive's implementation deadline (before 2010). As from 2010, there were considerably less questions on the Services Directive. Moreover, extensive information (including guidance) was made available on the website. Also, Europa decentraal had already placed the most important information on the website. In addition, various information meetings at different locations throughout the country were organised in consultation with the Ministry of the Interior.

A new policy domain for which Europa decentraal currently foresees an increase in the number of helpdesk questions for the years to come, is the information policy. At the start of 2016, important new European regulation on privacy has come into force. The new European General Data Protection Regulation (GDPR), which was approved early 2016, has direct effect. Just as previously with the Services Directive, the institute observes an increase in the number of questions in anticipation of the required application of the new European privacy legislation by local and regional authorities. Just like the state aid rules, these rules are laid down in a regulation need not be transposed into national legislation, but must be implemented directly by local and regional authorities. Moreover, privacy is an element that plays a role in quite a number of local policy domains. Therefore, Europa decentraal expects a strong increase in the information requirements in this field for the years to come. The institute will adapt its

products and services to this, in order to properly serve the local and regional authorities.

Figure 7. Development of the number of questions about the Services Directive



Consequences of the modernisation of state aid rules for local and regional level

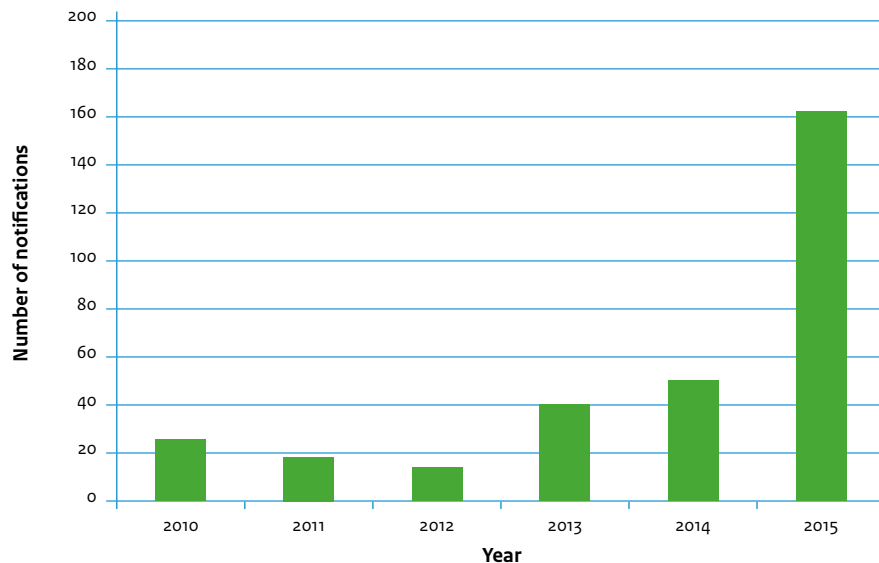
As explained above, Europa decentraal continuously strives for stabilisation of the number of helpdesk questions, mainly to maintain a proper balance between the number of questions from local and regional authorities and the institutes' capacity. Thus, the total number of questions asked and answered will remain around 1,000 questions per year. As regards state aid, Europa decentraal also disposes of figures about the number of notification procedures followed by local and regional authorities, in addition to data about the number of questions. These figures are also an indicator of the way in which European legislation may have a direct effect on the practice of local and regional authorities.

In principle, all projected state aid must be notified before the European Commission. The State Aid Modernisation (SAM) has resulted in wider possibilities for local and regional authorities to ensure, in a simple and fast way, that the projected state aid is 'state aid proof'. Before the revision of the state aid rules in 2014, local and regional authorities were obliged to notify certain categories of aid before the European Commission. Because of the new rules, these authorities can now confine themselves to a lighter reporting procedure for a wide

scale of state aid measures. One may e.g. think of additional aid categories for the benefit of sports and multifunctional recreational infrastructure. Furthermore, categories on Research, Development and Innovation (R&D&I) have also been included in the GBER.

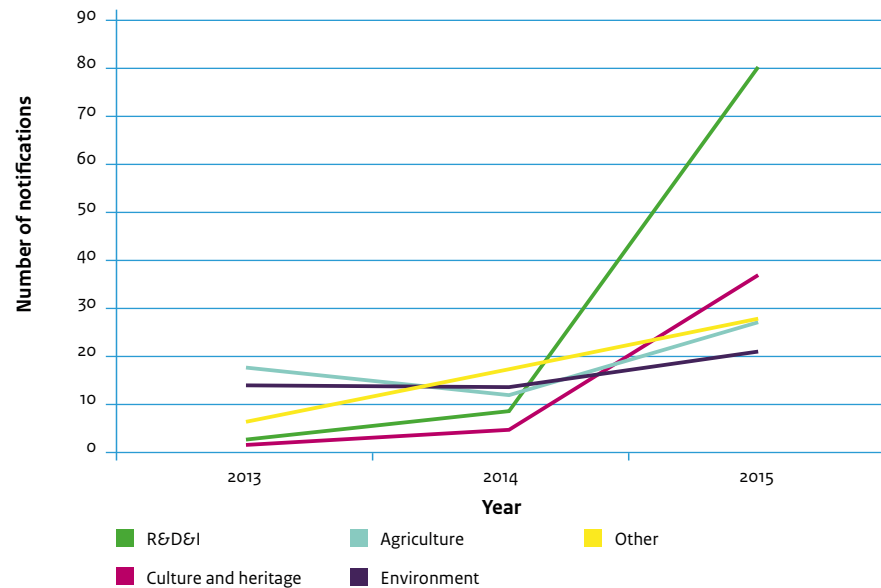
By order of the Ministry of the Interior, the institute provides guidance to provinces and municipalities in following notification procedures against the backdrop of the GBER and the Agricultural Block Exemption Regulation (ABER). Early 2016, Europa decentraal has published its first “Notifications barometer”. This publication includes a series of graphs containing information on the application of a number of state aid exemption regulations by local and regional authorities. The barometer makes use of data received from provinces, municipalities and partnerships about exemption notification procedures in connection with the GBER and ABER. As clearly indicated in Figure 8, the number of exemption notifications by local and regional authorities has witnessed an explosive growth: from 49 in 2014 to 162 in 2015.

Figure 8. Development of the number of notifications by Provincial authorities and municipalities 2010-2015



Formerly, agriculture and the environment were the most common aid categories for notifications. After revision of the rules, the most common categories were research, development and innovation (R&D&I) and culture and heritage. Figure 9 shows that the number of exemption notifications with respect to agriculture and the environment has remained more or less stable after revision of the rules in 2014. Still, a light increase can be observed in the number of notifications under the ABER following SAM. Just as the new GBER, the ABER has been further extended and the scope has been widened. The application possibilities for culture and heritage have been extended considerably, just like those for R&D&I, which may largely explain the increase. There are dozens of subsidies that may now fall under the scope of the GBER and that no longer need to be notified (such as aid for innovation clusters, aid for development projects, etc.).

Figure 9. Development of the number of notifications by category 2013-2015



2.2 Policy areas for the European Urban Agenda and European regulations: 2014-2015

In section 2.1, we examined the information requirements of local and regional authorities with respect to policy fields regarding European law. In this section, we will try and shed some light on their need for information on European law with respect to themes that are relevant to the European Urban Agenda.

The European Urban Agenda and better regulations

On 21 October 2015, the European Commission and the member states established the themes of the Urban Agenda in Luxembourg. During its Presidency of the EU, the Netherlands will focus on a better implementation of the Urban Agenda and the roadmap to Better Regulation. As part of the realisation of the EU Urban Agenda, the Pact of Amsterdam will be signed. One of the key elements of the Pact of Amsterdam is the creation of thematic partnerships. In the context of these partnerships, representatives of the European regions, cities and towns, member states, the European Commission as well as other stakeholders will cooperate with the purpose of increasing the urban dimension at the relevant European political level.

The objectives of the EU Urban Agenda, but e.g. also of the Europe 2020 strategy, cannot possibly be achieved without active involvement of cities, towns and urban areas. Among other things, the importance of this urban involvement (and, as such, of these partnerships) with respect to the outcome of said European objectives, is rooted in the fact that a major part of the European population lives in urban areas. Currently, this concerns 66% of the European population; in 2050, this figure is expected to rise to no less than 80%.

As yet, four partnerships have already been launched:

- Air quality (coordinated by the Dutch Ministry of Infrastructure and the Environment);
- Housing (coordinated by the Slovak Ministry of Transport, Construction and Regional Development);
- Inclusion of migrants and refugees (coordinated by the Municipality of Amsterdam);
- Urban poverty (coordinated by the Belgian Federal Urban Policy and the French Commissariat general à l'égalité des territoires).

The intention is to form partnerships with respect to the following themes as well:

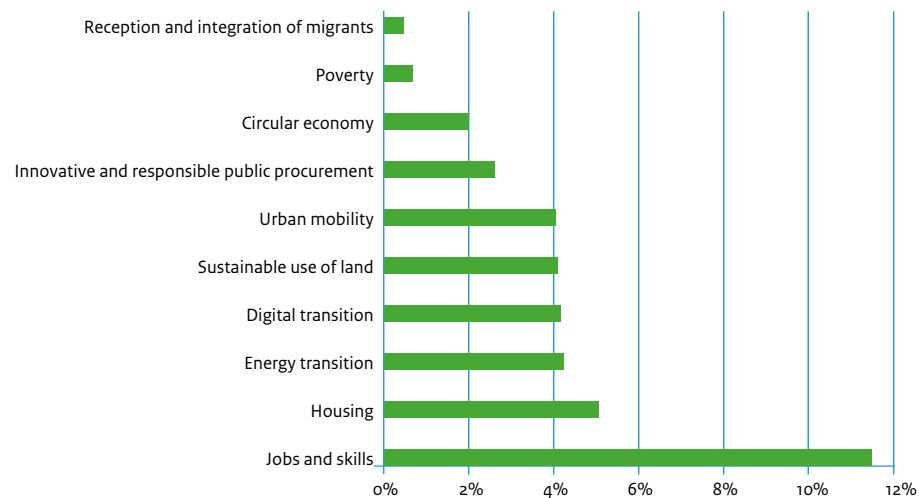
- Jobs and skills in the local economy;
- Sustainable land use;
- Circular economy;
- Climate adaptation;
- Energy transition;
- Urban mobility;
- Digital transition;
- Innovative and responsible public procurement.

The partnerships will identify and investigate the most urgent challenges with respect to the specific themes. Each partnership will investigate the following aspects: (1) better regulation; (2) better use of financial instruments; and (3) better exchange of knowledge. The investigations performed by the partnerships will span a period of three years and will pass through the following three phases: the exploratory phase, the active phase and the evaluation phase.

Questions asked with respect to the various themes of the European Urban Agenda

Previous diagrams were focused on the various fields of European law about which questions were submitted to Europa decentraal. This section will describe the local and regional policy domains to which the questions of 2014 and 2015 can be related. In 2014 and 2015, the total number of questions amounted to 846 and 736 respectively. For the purpose of this inventory, we have concentrated on those policy fields that are of relevance to the European Urban Agenda. Figure 10 specifies how many questions are asked about ten out of the twelve themes

Figuur 10. Questions on Urban Agenda themes in 2014 and 2015



of the Urban Agenda. Most questions were asked about the Urban Agenda theme of Jobs and skills, followed at some distance by Housing. A comparable number of questions was asked about the themes of Energy transition, Digital transition, Sustainable land use and Urban mobility. A considerable amount of questions concerned multiple themes, e.g. a combination of Jobs and skills and Housing.

Most questions on Urban Agenda themes were asked in the context of public procurement and state aid. Now what kind of questions are we talking about? Just to mention a few examples: May a Provincial authority require of a contracting party to take over staff when contracting out framework agreements? Is a water authority entitled to impose a social return requirement on foreign tenderers? Should wage subsidies to companies for employing people with a labour disability be considered as state aid?

Within the theme of Housing, there were more questions on state aid than on public procurement. Apart from the two examples already described in Part 1 of Bridge!, these questions concern such issues as: Does the choice of the partner with which the province intends to form a public-private partnership (PPS) have to be tendered as well? Does a municipality have to comply with the European internal market rules with respect to housing initiatives for asylum seekers and refugees? Should aid to a collective private commissioning in house construction be considered as state aid?

Nearly half of the questions about digital transition are asked in the context of the information society (EU General Data Protection Regulation and the EU Directive on the re-use of public sector information). What new European provisions on privacy will apply to children in youth care in the future, after the new GDPR has come into force? How high is the penalty that the supervising authority can impose on local and regional authorities in the event the latter do not comply with the GDPR? Are authorities, pursuant to the GDPR, required to appoint a privacy officer? The other half of the questions about this theme is about public procurement and state aid. As described in Part 1, the roll-out of broadband infrastructure is one of the most prominent topics in this respect.

Most questions in 2014 and 2015 concerned other policy areas, which are also of great relevance to cities and regions, but which have not been included as themes in the European Urban Agenda. In 2014 and 2015, a large number of questions was about research,

development and innovation (R&D&I), health and welfare, sports and culture. What possibilities do the state aid rules provide in order to meet the needs of local sports clubs? How should the exemption for cultural aid be applied in practice, when it comes to the calculation of a museum's net income? Is a water authority allowed to make use of the innovation partnership procedure for the benefit of an innovative project?

In addition, there was also a large number of questions on European law, which could not be linked directly to one of the Urban Agenda themes or to another policy theme. These questions may e.g. concern the meaning of a term in the regulation on the de minimis exemption or a notion in the EU procurement directives.

Part 3

Annexes

Annex 1 Legal substantiation examples

Annex 1.1 Energy Store: EU funding for innovation and the EU internal market rules

By means of the European Structural and Investment Funds (ESIF), the European Union seeks to enhance regional competitiveness and employment, as well as to facilitate cooperation between the regions and reduce the economic differences on the single market. Therefore, grants are allocated to projects in the field of e.g. research and innovation, sustainability and nature management, rural development, the roll-out of broadband, employment, etc.

In order to apply for such a grant, it is not enough to simply apply for funding and follow a procedure under one of the European funds. Because of the fact that public money is being invested, the application and allocation of these grants are, in addition to the ESIF procedures, also subject to the European public procurement and state aid rules. This results in a complex and time-consuming legal process. Often, double procedures must be followed. In addition, in some cases, rules and terms are not perfectly consistent.

To illustrate this with an example:

1. Energy Store is a partnership that comprises nineteen organisations, including municipalities, provincial governments, SMEs and scientific institutions (triple helix) from the Netherlands and Belgium.
2. It is Energy Store's objective to develop a new, innovative system for the storage of wind energy. This way, the wind energy generated can be used at all times and the energy will not get lost. Whenever it is not possible to generate sufficient wind energy, private customers and companies are no longer forced to fall back on the regular power grid, which still makes use of power generated by fossil fuels. The new system will be tested in a *real-life* environment, in other words in a *living lab*.
3. In order to fund the project, Energy Store intends to apply for a European grant. Through the European funds, the EU wants to encourage, among other things, innovation and sustainability, with the ultimate goal of creating a "smart, sustainable and inclusive economy". Energy Store's project fits in perfectly with that goal. Therefore, Energy Store

has submitted an application at the Managing Authority (MA) of Interreg, a European programme part of the European Regional Development Fund (ERDF). In the member state's relevant region, the MA is responsible for the operation and daily management of the subsidy programme. Interreg's MA will assess whether the project and all of the partners' activities are eligible for a grant under one of the funds. Subsequently, the application will be approved on the basis of the MA's Cooperation Programme (CP), a framework for the spending of Interreg funding in a region. The OP has been approved by the European Commission's Directorate-General for Regional and Urban Policy, which is responsible for the European funds.

4. The MA must also assess whether the project meets all requirements with respect to state aid. These requirements are imposed by the DG Competition, a different DG with its own set of rules. The MA will assess how much aid Energy Store is allowed to receive under the state aids rules for research, development and innovation (RD&I). Among other things, these rules require that an assessment is made per project partner of which activities they perform, whether aid may be granted for those specific activities according to the state aid rules and, if so, which aid percentage may be granted. Therefore, the MA does not perform its assessment at project level, but at the level of each of the 19 partners. Subsequently, the applicant must pass through a state aid procedure at the DG Competition.
5. As soon as both the application and the state aid procedure have been completed, Energy Store and the MA may possibly also have to deal with the European public procurement rules. In case the Interreg grant is used to finance a public contract, possibly, it is required under the public procurement rules to call for tenders for the purchase of the research material or the construction of the wind mills. A call for tenders may be required in the case of municipalities, provinces and universities taking part in the project. Afterwards, the MA must verify if the procedure has been executed correctly. However, the European funds require that Energy Store spends the funds granted within a certain period of time. Public procurement procedures may be very time-consuming and lead to delays. Energy Store runs the risk that it is not able to spend the European subsidy within the time limits imposed by Interreg and, as consequence, that it will be forced to refund the amount granted.

In conclusion:

Because Energy Store and the MA are obliged to apply both the rules of the European funds and the state aid and public procurement rules, they will also experience an additional administrative burden. Projects may become less manageable and there may occur risks in the practical execution, administration and invoicing:

- a. Rules of different DGs must be applied, each of the DG's having its own policies and terminology.
- b. The state aid rules and the rules of the European funds may in some cases even be contradictory. While the European funds encourage living labs, the state aid rules do not allow too much subsidy for this type of activity and in some cases do not allow for subsidy at all.
- c. As such, Energy Store and the MA will experience legal uncertainty. While a certain application for a grant is approved on the basis of the rules of one DG, the other DG does not make any formal promises and may reclaim the grant afterwards.
- d. The rules and deadlines with respect to the EU funds may also be contradictory to the rules and procedures regarding state aid and public procurement.

Annex 1.2 Local4Local: local entrepreneurship meets internal market

The EU wants to encourage local agricultural products in nearby cities and towns (so-called local supply chains). In fact, this is one of the policy objectives of DG Agriculture. Local distribution of agricultural products contributes to a more sustainable agricultural sector, consolidation of the local economy, strengthening of entrepreneurship and improvement of the environment.

This policy is also embraced by cities and other local and regional authorities. These authorities are looking for ways to encourage such local supply chains, e.g. by means of subsidies to local farmers. Because such enterprises receive aid from public funds, cities must comply with the EU state aid rules. As part of these rules, there are various exceptions and exemptions, which should enable the authorities to provide support without causing any unfair competition within the European single market. Exemptions ensure that no lengthy and laborious state aid procedures need to be followed and that, indeed, a lighter procedure will suffice. However, authorities are not allowed to make use of this instrument if the subsidy depends

on the use of domestic products, instead of imported products. After all, from a state-aid perspective, this may result in unfair competition with farmers from other member states. State aid rules provide for an exception as regards local supply chains; still, the amount of subsidy allowed is very low and, in addition, should be limited to consultancy costs.

As a consequence, authorities have to enter into lengthy application procedures with a considerable administrative burden for relatively low subsidy amounts. This procedure needs to be followed at DG Agriculture, the very same DG that is responsible for the policy to encourage local supply chains.

To illustrate this with an example:

1. Apple farmer John grows apples in the Dutch Province of X. Each week, these apples are transported to an auction hall some 100 kilometres ahead. It is the farmer's wish to market his harvest in his own region as well.
2. Currently, apple farmer John is responsible for managing of the apple production as well as for the dealings with the auction. He does not have the time and the means to set a transition of his production processes in motion. The costs of this transition would amount to at least € 10.000,-.
3. Just like DG Agriculture, the Province of X has the intention to encourage local supply chains. The Provincial authorities want to set up a subsidy scheme in order to encourage the marketing of agricultural products in nearby regions. On the basis of this subsidy scheme, farmers can apply for a subsidy for obtaining external advice.
4. Farmer John needs external advice and applies for a subsidy at the Provincial authorities in order to be able to engage a consultant. This consultant should help him in restructuring his production processes. This way, the farmer hopes to achieve a transition and to establish a new chain in cooperation with farmers in the region as well as businesses and consumers in the city.
5. The state aid rules are applicable to this situation.

Normally, small amounts can be granted on the basis of the regulation on de minimis aid. In that case, a state aid notification procedure is not necessary. However, the de minimis regulation also contains the stipulation on domestic products. As a consequence, the de minimis regulation does not apply in this case.

There are two options:

Option 1:

1. In the event the Provincial authorities want to avoid a lengthy state aid procedure and want to claim an exemption, the maximum subsidy to be granted to the farmer amounts to € 1.500,-.
2. One of the advantages is that the authorities can confine themselves to a light notification procedure at DG Agriculture of the European Commission.
3. In this case, the Provincial authorities will receive a reaction from DG Agriculture within ten working days.
4. After that, the subsidy scheme can be implemented right away.
5. However, the amount is by no means sufficient for farmer John to pay an external consultant to support him in the reorganisation of his production processes.

Option 2:

1. In the event the Provincial authorities want to grant the farmer a subsidy in excess of € 1.500,-, the option of an exemption is no longer available because of the ban on granting subsidies to projects in which only domestic products are used.
2. Therefore, the Provincial authorities will have to submit a notification under legislation at a higher level, i.e. the Guidelines for State aid in the agricultural and forestry sectors and in rural areas. Under these regulations, the application procedure may take 3 to 18 months. This is very time-consuming.
3. In addition, by revising the state aid rules in 2014, the European Commission has given a clear signal that it will henceforth focus on larger anti-competitive cases. In this light, an application for a relatively small-scaled subsidy scheme is not very desirable.
4. Furthermore, as long as the application procedure is still pending, some standstill provisions apply pursuant to European state aid law. This means that the Provincial authorities are not allowed to provide any support until the Commission has reached a decision.
5. Both the authorities and the farmer will have to wait for the Commission's decision. In other words, farmer John is not able to immediately engage an external consultant. This interferes with the practical implementation of the policy regarding *local supply chains*.

As the time and the means needed to implement a subsidy scheme are disproportionate to the level of the amount to be provided, the Provincial authorities decide to abandon the scheme altogether. As a consequence, farmer John cannot claim any subsidy and the production

processes of his farm remain unchanged. Therefore, he will still deliver his apples to the auction hall some 100 kilometres ahead.

In conclusion:

- a. DG Agriculture's policy does not fit in well with the DG's own rules. Because of the rules, the Province finds it hard to achieve its own policy objectives as well as those of the EU.
- b. Provincial authorities must spend considerable time, means and energy to follow the application procedure. Indeed, this procedure may take 3 to 18 months. On the other hand, only a small amount would suffice for the Province of X to support farmer John. This is perceived as disproportionate.

Annex 1.3 InstaGreen: re-use of public service information

The Directive on the re-use of public sector information (the PSI directive), which has been revised in 2013 and transposed into Dutch legislation as from 18 July 2015, requires local and regional authorities to make available public information for re-use by businesses or citizens. This should be done free of charge or for a small remuneration. In this way, public information can be re-used in the commercial sector, by both citizens and businesses.

One of the policy objectives of the DG for Communications Networks, Content & Technology (DG CONNECT) is that public information should contribute to encouraging innovative entrepreneurship. In its turn, this may lead to more jobs and economic growth. In order to tap this economic potential even better, the European Commission has drawn up the Directive on the re-use of public sector information (the PSI directive). This directive is fully in line with the EU 2020 strategy, and is meant to "turn the EU into a smart, sustainable and inclusive economy, delivering high levels of employment, productivity and social cohesion."

Along with the PSI directive, a concurrence of at least six sets of European legislation of different DGs has come into existence. When a municipality receives a request for re-use of public information, it must apply various legal rules originating from different directives in order to assess if and how the information can be made available. As a result of the introduction of this directive, municipalities and other local and regional authorities are confronted with numerous ambiguities as well as additional administrative expenses. As the directive's scope of application has been extended, making available public information seems to have become more complex and more complicated.

This can be illustrated by the following example:

1. Martha, who lives in the Municipality of X, has her own e-business. The company has its own unique formula on the basis of which consumers may indicate on the website which apps they would like to see developed.
2. Recently, Martha has received a great deal of requests by consumers who would like to have an app indicating where they can find “green” natural parks in a particular city.
3. She decides to develop the app under the name of InstaGreen. With help of this app, people can search, by means of detailed maps and emission data, for the “greenest” spot in their environment for recreational purposes. Martha would like to market the app.
4. In order to develop InstaGreen, Martha needs access to information from the Municipality of X on e.g. the location of green parks, air quality, safety, accessibility (public or not) and the exact location of picnic tables. Therefore, she would like to have access to the municipality’s (environmental) database.
5. Martha files a request with the municipality to receive these data in digital form. This way, she can re-use them for her app.

In order to process Martha’s request, the Municipality of X needs the answers to some very complex questions:

6. The municipality receives Martha’s request for access (and re-use) of governmental information regarding the environment and makes an assessment. The municipality investigates under which legal framework the request needs to be judged. Martha’s request may fall, among other things, under the scope of the PSI directive and the directive on public access to environmental information (Directive 2003/4/EC) (DG ENVI). An important element is that the request concerns information which has already been made public.
7. In order to assess whether the PSI directive is applicable, the municipality needs to verify whether it can be considered as a “public sector body”. The definition of this term as included in the PSI directive, has been derived from the term “contracting authority” as used in the European public procurement directives (DG Growth).
8. Subsequently, the municipality needs to verify whether the requested information may indeed be furnished to Martha. In principle, pursuant to the PSI directive, municipalities are obliged to allow such a request. Municipalities must reject such a request if there are sufficient grounds to do so. In order to establish whether the information may be made public or Martha’s request must be rejected, the municipality should check, among other things, the following:

- whether the intellectual-property rights are vested in third parties;
 - whether the data contain personal data which are not meant for re-use.
9. To do so, the municipality needs to consult different sets of rules, all of them originating from EU law: rules on intellectual property and copyright (DG CONNECT), rules on database right (DG Growth) and rules on privacy rules (DG JUST).
 10. In the event the municipality is entitled to furnish the information, it will retrieve the requested information from the various municipal departments and services, as well as from the municipal archive.
 11. Not all information is available in digital form; still, pursuant to the PSI directive, the municipality is bound by a best efforts obligation to furnish the data in a machine-readable format. The municipal service hires additional staff to convert the information into digitised documents.
 12. The municipality verifies whether it may charge copy expenses and wage costs. According to the PSI directive, only marginal costs may be charged by the municipality. However, in accordance with case-law of the European Court of Justice, as well as the directive on public access to environmental information, it appears that the authorities may charge “reasonable costs”. These terms vary widely and are different in both nature and purpose.

Conclusion:

- a. As a result of the revised PSI directive, a **concurrence** of diverse and varying sets of European legislation of different DGs has come into existence. Consequently, the implementation of the law can be complicated for cities in practice.
- b. The objectives of certain rules are **contradictory**. In practice, the PSI directive seems difficult to implement in practice.
- c. The terminology used in the PSI directive is derived from the public procurement regime, which makes **the interpretation even more challenging**.

Annex 1.4 Small on Small: limits of de-minimis aid

The European Commission has simplified the state aid rules in 2014. This was done in the context of “Better Regulation” and the EU 2020 objectives. One of the main objectives of the so-called State Aid Modernisation (SAM) initiative, is an increased focus on issues that may have a significant impact on the European internal market, and thus less attention to cases with relatively low amounts of aid. In the light of the SAM simplification package, the exemption criteria have also been relaxed. From now on, municipalities and local and regional authorities can confine themselves to a lighter procedure and are no longer obliged to report state aid.

One of these exemptions is the de minimis rule. Under this rule, authorities can provide aid up to an amount of € 200.000,- over a period of three years. In accordance with the de minimis rule, this is not considered as state aid. And no procedure is needed whatsoever.

In this modernisation package, the Commission did not raise the de minimis threshold of € 200.000,-. Nonetheless, the amount of € 200.000,- appears to be rather low in practice to effectively encourage local initiatives and may therefore easily be exceeded.

To illustrate this with an example:

1. The Municipality of X has implemented a subsidy scheme with respect to sustainability and urban agriculture for entrepreneurs. The municipality hopes to encourage entrepreneurs to base their activities on principles of corporate social responsibility and sustainability.
2. Francine is owner of a small restaurant which only serves organic products. Her restaurant is a success and she would like to expand his business model. The restaurant is situated in a deprived district; however, the district is on the way up thanks to a group of young starting entrepreneurs.
3. A few blocks away, a building is for sale. Francine would like to renovate this building and exploit it as an organic restaurant. On the roof of the building, she would like to grow his own vegetables and fruit – as an urban farmer.
4. In this restaurant, Francine would like to serve organically produced products. It is her intention to encourage sustainable entrepreneurship as well as to revitalise the building.
5. Before she can open his new restaurant, Francine needs to renovate the building and prepare the roof garden for the cultivation of fruit and vegetables. With her start-up capital and some financial support by third-parties, she is able to pay the building’s rent as well as the restaurant’s inventory.
6. For the renovation of the building, Francine would need an amount of approximately € 240.000,-, and for the agricultural roof garden another € 20.000,-.
7. Francine submits an application for a subsidy for the funding of the these activities under the municipality’s subsidy scheme. The project fits in well with the purpose of the scheme.
8. However, the municipality runs up against some practical issues:
 - The amount requested for the renovation of the building exceeds the de minimis threshold of € 200.000,-. Therefore, the support cannot be granted in full (and without notification) under the de minimis rule. As a result, Francine runs short of an amount of € 40.000,-. Without that amount, she will not be able to fund the project.
 - For that reason, the municipality has no other option than to apply the regular state aid rules and go through a state aid procedure for the subsidy for the building’s renovation. This is done at the DG Competition.
9. Because Francine intends to grow her own agricultural products, her activities are deemed to be farming activities in accordance with the state aid rules. To agricultural activities, different and more strict state aid rules apply.
 - The agricultural de minimis rule does not apply at all, as the threshold of € 15.000,- has been exceeded.
 - As regards the amount of € 20.000,- for the planning of the roof garden, the municipality has to submit a notification under the agricultural state aid rules. This is done at DG Agriculture.
10. Because of a difference of € 45.000,-, the municipality has to follow two different procedures at two different DGs with different working methods and different deadlines.

Conclusion:

- a. Because of **the limited extent of the de minimis ceiling**, municipalities and other local and regional authorities will rather quickly have to still initiate an exemption notification procedure with the European Commission, even in the case of a relatively small amount of aid.
- b. In the event that a project also comprises agricultural activities, municipalities will have to deal with **two separate support frameworks** as soon as the de minimis threshold is exceeded. These support frameworks originate from **different DGs**, which have different deadlines and different working methods.
- c. For instance, DG Agriculture checks the notifications in advance, whereas DG Competition checks the notifications afterwards on a random basis. In practice, this may lead to **implementation difficulties** for local and regional authorities which may have the intention of providing aid.

- d. The current de minimis rules can still result in an additional **administrative burden** for both local and regional authorities and DGs in terms of processing notifications.

Annex 1.5 Urban Habitats: animal and human habitats in an urban environment

The European Commission's biodiversity strategy is aimed at protecting the member states' wild life. For this purpose two directives, among others, have been drawn up: the Birds Directive and the Habitats Directive. On the basis of these directives, the EU tries to protect certain animals and plants as well as their natural habitats.

During the implementation of their spatial planning, municipalities and local and regional authorities will have to deal directly with these directives. E.g. before they can start realising a project or making a development plan, they will have to investigate whether the area involved is a protected area and whether it contains any protected animal or plant species. If this is the case, the municipality will have to investigate whether the project's implementation might have significant negative effects for these protected animal or plant species. Should there indeed be such significant effects, the project can only be carried out if it is possible to take some mitigating or, in specific cases, compensatory measures.

In this, various bottlenecks may occur, both in terms of the investigation and in terms of any necessary measures. This may include the following: higher implementation costs, an increase in the project costs as a result of any necessary mitigating and compensatory measures, or the impossibility to even proceed with the project. It is hard to avoid these bottlenecks, not just in a practical sense: they are sometimes also very complicated in legal terms.

In addition, there are some practical challenges regarding the protection regime of certain animal species. In the Habitats Directive, a distinction is made between the protection level and the corresponding rarity of the animal or plant species involved. As a consequence, some animal species are considered, at European level, to be very rare and, therefore, enjoy protection under the strictest protection regime. However, these same rules also apply to certain species that may be protected at European level, but that are very common in some of the member states.

The bottlenecks that may occur in terms of the protection of such species, can be illustrated by the example of the common pipistrelle.

To illustrate this with an example:

1. In the Municipality of X, there is an industrial and port area, in which the factories and buildings have been unoccupied for some years now. The buildings are in a very bad shape, as they are no longer maintained.
2. The Municipality of X would like to convert the area into a new district with both commercial owner-occupied homes and social housing. To this end, a project developer has been commissioned to execute the project.
3. Over the years, the unoccupied buildings have become the habitat of the protected common pipistrelle. This type of bat comes under the directive's strictest level of protection; still, the species is much more common in The Netherlands than in other member states.
4. According to the Habitats Directive, the municipality is obliged to prepare an environmental report, in which the consequences of a possible renovation for the common pipistrelle are assessed. The project developer is also obliged to investigate the consequences for the area's wild life, and the results of this investigation must be drawn up in an environmental impact assessment.
5. In other words, both the municipality and the project developer are obliged to investigate the development project's possible consequences for the common pipistrelle. There is an overlap in administrative burden and the exact scope of both investigation reports is not too clear either.
6. In the municipality's report, it is concluded that the renovation's consequences for the common pipistrelle are not overly significant. However, the environmental impact assessment by the project developer indicates that the consequences may indeed be significant. It is sufficient to conclude that the project may have significant negative consequences for the common pipistrelle.

7. It is now up to the municipality to assess whether any mitigating measures can be taken and, if not, whether there are any possible alternatives without significant negative consequences. Obviously, this is a cost-increasing and time-consuming procedure. Another important question is: who will bear the costs for these measures and the delayed completion that comes along.
8. In this case, the municipality had to conclude there were neither any possibilities for mitigating measures nor for any alternative plans. Another possibility to proceed with the project is when there are “imperative reasons of overriding public interest” to do so. This is one of the exemptions laid down in the Habitats Directive, which falls within the competence of DG Environment.
9. The municipality has difficulties to give a concrete substantiation of the concept of “imperative reasons of overriding public interest”. Because the EU has not given any concrete substantiation of the concept so far, it is not applied often in practice. According to the Commission, “imperative reasons of overriding public interest” are equal to the principle of “imperative requirement” as part of the principles of free movement (DG Growth), as well as to the principle on services of general economic interest (DG Competition). Therefore, there is an overlap between various disciplines within European law, each relating to its own DG.
10. Because the project concerns both commercial owner-occupied homes and social housing, it is not perfectly clear whether the concept of “imperative reasons of overriding public interest” can be applied to it.

Conclusion:

- a. Local and regional authorities may experience **practical problems** with respect to animals that, under the Habitats Directive, can be deemed as (highly) protected, but that constitute a fairly common species in a specific member state.
- b. It is **not always clear** when “imperative reasons of overriding public interest” can be said to exist. The fact that DG Environment refers to concepts used by DG Growth and DG Competition, makes it even more challenging to substantiate the concept.
- c. In addition, one may also question **how far** the municipality should actually go **to protect** the common pipistrelle.
- d. The investigation requirement and the assessment of alternative or compensatory measures imply **additional costs** and may also lead to **lengthy procedures**. This may particularly apply to animals that are strictly protected, but that are nonetheless fairly common in a certain member state.

Annex 1.6 Growing Power: state aid for environmental innovation

Reduction of the CO₂ emission by twenty per cent compared to 1990 is part of the Europe 2020 strategy. For 2030, the aim is to reduce the CO₂ emission by at least forty per cent. In 2050, the CO₂ emission should be reduced by eighty per cent. To achieve this, a CO₂ emissions trading system – under the name of EU-ETS – has been implemented at EU level for a number of sectors.

Another possibility to reduce the emission of CO₂ might be to reuse CO₂. This is a relatively new approach, which is still quite expensive. Therefore, financial aid from the government is often needed to get initiatives of this type off the ground. If the authorities opt for a subsidy scheme, the European state aid rules for environmental protection apply. The rules are intended to encourage companies to achieve a “higher level of environmental protection.”

In order to achieve a balance between this objective and the protection of the internal market, the European Commission has included some limits in the state aid rules with respect to the amount of aid that can be granted by authorities. These limits make it hard to simply grant state aid to the more innovative projects in the field of environmental protection.

To illustrate this with an example:

1. A large factory on the outskirts of a town emits a large amount of CO₂ during its production processes. The factory is looking for possibilities to reduce its CO₂ emission. There are possibilities for reuse in horticulture: the CO₂ could e.g. be used to stimulate the growth of plants.
2. On the outskirts of town, there is also a large greenhouse horticulture business. In order to obtain heat and CO₂ and, thus, to enhance the growth of the plants, this greenhouse horticulture business currently combusts natural gas, a fossil fuel. Even in the warmer months of the year, during which no additional heat is needed in the greenhouses, the horticulture business still combusts natural gas, purely for the growth-enhancing effect of CO₂.
3. The factory sees possibilities to deliver waste CO₂ to the greenhouse horticulture business. In that case, greenhouses do not have to make use of natural gas, which results in a substantial reduction of CO₂.
4. In order to be able to deliver the waste CO₂ to the greenhouse horticulture business,

the CO₂ must first be captured and processed. Furthermore, a transport pipeline needs to be constructed, through which the plant's CO₂ can be transported to the greenhouse horticulture business.

5. The factory files a request for subsidy with the municipality. The municipality is prepared to provide financial aid for the project and to honour the request. The project fits in well with the European environmental objectives and the municipality's ambitions in this field.
6. Because the municipality opts for providing financial aid, the European state aid rules must be complied with. According to the rules, the state aid must be notified before the European Commission. The rules provide for a large number of exceptions with respect to environmental aid. As a result, authorities can often confine themselves to a lighter reporting procedure (notification). A formal application procedure is not necessary in that case.

However, the factory's project appears not fall under any of the exceptions.

7. To begin with, aid granted for the benefit of infrastructure does not fall within the scope of the environmental state aid rules.

In addition, the state aid rules require that the aid's beneficiary, in this case the factory, is actually the party achieving the positive effect on the environment. This implies that, as a result of the subsidy, the factory should modify its production processes in such a manner that the pressure on the environment is reduced. This is the only way for the municipality to provide the aid in conformity with the state aid rules.

8. The environmental impact of rolling out a CO₂ transport infrastructure cannot be attributed to the factory itself. After all, the factory itself will still produce CO₂. The ultimate environmental impact is achieved by the nearby greenhouses, which can make use of the factory's waste CO₂ instead of combusting natural gas, a fossil fuel.
9. Therefore, the project does not fall within the scope of application of the environmental state aid rules. Other exceptions laid down in the state aid rules neither appear to be suitable for the project. Therefore, the municipality cannot simply follow a lighter reporting procedure, which means that, pursuant to the state aid rules, the project must be notified before the Commission on the basis of the prohibition of state aid as enshrined in the Treaty (TFEU).
10. This notification can be very time-consuming (3 to 18 months). In this, the municipality cannot base itself on the existing environmental guidelines and will have to argue extensively why state aid for the project might be permitted. This will result in an additional administrative burden with respect to a notification and an application under the environmental guidelines.

In conclusion:

- a. Even though the state aid rules provide for various exceptions with respect to environmental aid, **they are not always fully in line** with the European, national and local ambitions in the field of the environment. The limits imposed by the Commission to prevent distortion of competition on the internal market, make it hard to simply grant state aid to the more innovative projects in the field of environmental protection.
- b. According to the current state aid rules, environmental aid is only permitted in the event that a certain project directly leads to an environmental improvement which can be attributed to the beneficiary of the aid. Projects leading **indirectly** to a reduction of the emission of greenhouse gases, **do not fit in with the existing support frameworks** and need to be notified directly under the TFEU.
- c. An application procedure under the Treaty will result in **an additional administrative burden** for local authorities and may delay the projects.

Annex 1.7 Acces2Fiber: roll-out of broadband infrastructure

The European Union wants to achieve payable access to (ultra) high-speed internet for all citizens and companies throughout Europe. The EU makes financial funds available for the construction of (ultra) high-speed internet as well as other digital networks, also in outside areas, e.g. through the European Fund for Strategic Investments (EFSI).

In the more peripheral areas, the roll-out of a broadband infrastructure is not commercially attractive to the market. Often, municipalities and other local and regional authorities have to invest themselves if they want to connect rural areas to the Internet. However, government aid is also needed in densely populated, urban areas, in order to modernise the existing networks and to increase the internet speed (e.g. through the roll-out of a fibre network).

There are different options for authorities to encourage the roll-out of infrastructure. In the event municipalities and other local authorities decide to provide financial aid for the roll-out or improvement of the broadband infrastructure, they are obliged to apply the state aid rules. Until recently, state aid for broadband infrastructure was only possible on the basis of a notification procedure before the European Commission. However, as from 1 July 2014, authorities are allowed to follow a lighter notification procedure, based on a new exemption in the state aid rules.

In order to be entitled to make use of this exemption, authorities still need to meet relatively strict conditions. As a result, the preparation of broadband stimulation funds and subsidy schemes can still be a lengthy and expensive process.

To illustrate this with an example:

1. A province plays an active role in encouraging the roll-out of a broadband network in those areas in which the market does not take any initiative to construct a future-proof broadband infrastructure. In the province's cities and the majority of the rural areas, the cable infrastructure is already present. Both companies and households are already connected to this cable network.
2. Still, in some 15% of the province's rural areas, not everyone is connected to the fixed cable infrastructure. These individuals and companies are only connected to the Internet via a satellite or via copper pipes. These connections are substantially slower and often not stable. Thus, companies are impeded in the execution of their business, while citizens are impeded in their communication, also with the Provincial and other authorities.
3. It appears from discussions with market participants that the latter will not connect said households and companies on the basis of their own market initiatives, as these connections are not profitable. According to these market participants, a connection is generally unprofitable if the costs per connection exceed the amount of € 3,000,-.
4. The Provincial authorities would like to grant a subsidy in order to encourage and accelerate the roll-out of broadband in the rural areas.
The authorities would like to encourage market participants in order to connect some individuals and businesses in rural areas to the existing infrastructure.
5. In addition, they would like to grant a subsidy to all citizens who and companies that are prepared to arrange the connection to the existing infrastructure themselves.
However, whenever subsidies are granted to companies, the Provincial authorities are obliged to comply with the European state aid rules. Before the authorities may start spending the funds, they have to meet a number of conditions.
6. The state aid rules for broadband distinguish between black, grey and white areas:
 - black areas, in which *no* market failure occurs and in which broadband is provided by various market participants;
 - grey areas, in which there is only *one* market participant and in which, probably, no other network will be laid out the coming three years;
 - white areas, in which market failure *does* occur. There is no infrastructure present, *and* the market will not provide any infrastructure over the next three years.
7. In principle, pursuant to the state aid rules, no aid whatsoever may be provided to broadband in white areas. If an area is white, the Provincial authorities do not need to follow any administratively burdensome and lengthy notification procedures in Brussels. In that case, a lighter notification procedures suffices.
8. Whether a specific area can be deemed as white, must be tested by the Provincial authorities by means of an open, public market consultation in accordance with the state aid rules. Among other things, the authorities pose the question on a central, national website whether any market participants have plans for these rural areas.
9. The public consultation only proceeds with difficulty. The Provincial authorities are dependent on the market's willingness to provide information. The information derived from the responses to the public consultation may be sufficiently substantiated in legal terms (i.e. in accordance with the state aid rules), but is, unfortunately, not always very useful to the Provincial authorities, or sufficiently substantiated from a market perspective.
10. For a number of areas, the market participants e.g. indicate they are indeed interested in rolling out the cable infrastructure. According to the state aid rules, an area is no longer considered white, but as grey or black, as soon as one of the market participants indicates that it has plans for this area. In that case, the authorities are not allowed to provide aid.
11. The result is that the province ends up with a 'patchwork' of white areas, for which the market has *not* indicated any interest in rolling out a network, and grey and black areas, for which the market *does* indicate its interest.
12. Moreover, just establishing which areas are white, will not suffice for the authorities:
 - In addition, according to the state aid rules, the Provincial authorities should also set up a "open, transparent and non-discriminatory competitive selection process" for selecting which party will be commissioned to roll out the infrastructure, and for establishing the level of the amount to be granted. This selection process should comply with all European public procurement rules. This process is expensive and time-consuming for the province as well.
 - Additional point of interest: The Provincial authorities are *not* allowed to follow the lighter aid procedure in the event of a subsidy for the roll-out of broadband in a white area by (collectives of) farmers. The exception for the exemption for broadband does not apply to this. Aid to collective of farmers is subjected to the agricultural aid rules. Therefore, these subsidies must be notified.

13. In the event the Provincial authorities would like to provide aid in the grey areas, a lighter aid procedure would not suffice and the aid must be formally notified to the European Commission in accordance with the broadband rules. This is an administratively burdensome procedure, which may easily take 3 to 18 months. In addition, the stand-still obligation applies, which means that the Provincial authorities are not allowed to provide any aid until the Commission has reached a decision.

As a consequence of possible aid to white areas on the basis of the exemption option, citizens and businesses in specific postal code areas situated in a white area, will have access to ultra high-speed inherent at short notice. However in postal code areas, which are situated in grey areas just adjacent to the afore-said white areas, there will be a substantial delay in the roll-out of the broadband infrastructure or the latter may not even be realised. The latter may e.g. be the case if the Provincial authorities do not see the point of a lengthy procedure before the European Commission.

14. In the event of aid for the roll-out of broadband by farmers, the Provincial authorities must follow the lengthy application procedure anyway, whether the respective farmers live in a black, white or grey area. Aid for the roll-out of broadband for farmers simply does not fit in the aforementioned conditions of the broadband exemption.

Conclusion:

- a. In order to be entitled to make use of the exemption with respect to aid for the roll-out of broadband, authorities still need to meet **relatively strict conditions**. As a result, the preparation of subsidy schemes can still be a lengthy and expensive process. This may delay the ultimate goal of the aid considerably, i.e. a speedy roll-out of a broadband infrastructure.
- b. As a result of the state aid rules for broadband, the province is confronted with a **'patchwork'** of black, grey and white areas in the rural areas as a direct result of the required market consultation. In order to encourage the roll-out of broadband, the Provincial authorities must comply with different conditions in one and the same area. For black and grey areas, there are stricter rules and lengthier procedures before the European Commission than for white areas.
- c. It is difficult to organise any aid for the roll-out of broadband to collectives of **farmers** in a way that is state aid proof. Aid for broadband to farmers does not fit in with the 'lighter' state aid rules.

d. In this situation, the various state aid rules can interfere with a **comprehensive approach** to the roll-out of broadband throughout the entire rural area.

Annex 1.8 Government means business: housing and area development

The drawing-up of regulations or policies in the field of area development is to a large extent left to the Member States themselves. However, in practice, it turns out that (local and regional) authorities still have to deal with quite some European rules when preparing area development plans. One may think of e.g. the regulations with respect to the European Structural and Investment Funds (ESIF), the Birds Directive and the Habitats Directive, as well as rules in the field of the single market, competition and state aid. The European regulations regarding the single market may prove an impediment as regards the valuation and sale of land by authorities to market participants. A concurrence of state aid rules and public procurement rules occurs.

If authorities, acting on the basis of their public role, act in the capacity of facilitator or contracting authority, they must, as public institutions, follow the very same rules with respect to the valuation and sale of public land and building. Simultaneously, those very same authorities must act, pursuant to those very same rules, as a private market participant and ensure financially balanced market prices. In practice, it is often hard for municipalities and other local and regional authorities to realise area development projects in a 'Europe-proof' manner, and to simultaneously achieve public objectives.

To illustrate this with an example:

1. In deprived neighbourhood Y, there is an old administration building belonging to the Municipal Environment Department of the Municipality of X. About a year ago, the Municipal Environment Department moved to the new town hall. Since then, the building has been vacant. The municipality still pays considerably high charges for maintenance and security.
2. The District of Y is in a very bad shape. A large percentage of the inhabitants has a low income and a low education level. In addition, the neighbourhood's unemployment rate is rather high. Private buildings are poorly maintained and other office buildings have to cope

with vacancy and degradation. The district is inconvenienced by loitering youths and has the highest burglary rate of the city. Local residents do not feel safe in the street.

3. The Municipality of X would very much like to improve the district's standing and quality of life. The plan is to convert the former Municipal Environment Department building into an apartment complex, containing rental and owner-occupied apartments for the private market, but above all social housing apartments. In addition to improving the district's life quality and the reputation of the entire area, the renovation of the former office building also offers a solution for the urgent lack of payable houses throughout the city. With the more luxurious owner-occupied houses and the rental apartments in a more expensive segment, the municipality hopes to attract other social groups to the district.
4. Even though a number of owner-occupied and private rental apartments can be realised in the building, the project as a whole is still unattractive to project developers. This is because of the building's location in District Y as well as the social destination that the municipality has in mind. The project has an operating shortfall, which cannot be borne by the various market participants.
5. In order to still realise its public interests, the municipality considers whether it can indemnify the project developers and offer the land and the building at a lower price. The municipality wants to provide financial aid to the project developers, also as a compensation for the operating shortfall with respect to the project development. However, in doing so, the municipality encounters various issues in the field of European single market regulations.
6. When selling the public buildings, the municipality must comply with state aid rules. According to the state aid rules, the municipality's building should be sold on an arm's length basis, in order to prevent illegal state aid.
7. According to the current state aid rules regarding land transactions, the municipality can determine the market value of both the building and the land in two ways: by means of an open tender procedure or by means of a valuation by an independent valuer. These possibilities are further elaborated in the revised state aid rules (still in draft). Among other things, the option of a benchmark is added. Within the framework of the (new) state aid rules, the municipality has little space to deviate from the fair value in order to make the project more attractive to project developers.
8. In the event that the municipality opts for *an open tender procedure*, the European Commission argues that market conformity can be assumed if the tender takes place in conformity with the principles of the EU public procurement directives. This also applies in the event that the public procurement rules appear not to be applicable because there is no 'public contract'.

The municipality is not sure how it should act:

- This provision seems not to be fully in line with the debate that is currently going on in the context of the public procurement rules and their application in the field of area development. Among other things in case law, the matter is still pending in which situations a project in the field of area development is considered a public contract and, consequently, whether or not an obligation to issue a call for tenders exists.
 - Furthermore, in the revised state aid rules, the European Commission argues that the municipality should be guided by the *highest* price when selling assets, goods or services. Serving the public interest or weighing the quality offered is not allowed to play a role in the selection of the buyer. Only when *purchasing* assets, goods and services, authorities are allowed to weigh other aspects.
 - The European public procurement rules are aimed at achieving a balance between the price offered by market participants and the quality obtained by the authority awarding the contract (i.e. the most economically advantageous tender). And, as such, between the market conformity of the tender and acting in the best possible public interests. The (revised) state aid rules are not fully in conformity with this principle.
9. In the event the municipality opts for a *benchmark*, the municipality needs to determine the fair value by looking at the prices of comparable objects sold on the private real estate market. Particularly with respect to more complex projects, in which cities e.g. try and combine various (societal and commercial) functions in an innovative manner, it is always the question whether there are any comparable objects available at all and, moreover, whether such objects, if and in so far as available, are situated in a district comparable to District Y, in which similar public interests play a role. This is often not the case.
 10. In the event the aforementioned methods are not suitable, the municipality might opt, pursuant to the new state aid rules, for alternative methods, such as a *valuation*. According to the current rules, it is allowed to deviate from the estimated value, albeit to a limited extent, if the building is not sold for the valued price. In the new state aid rules, this possibility is no longer referred to. As an alternative, the municipality could make use of the *de minimis* exemption in order to cover the operating shortfall. On the basis of this exemption, the project developer is entitled to enjoy a benefit of € 200.000,- over three fiscal years. However, major real estate developers receive *de minimis* aid more often, as a consequence of which they have reached their limit already. Therefore, this derogation option is not applicable.
 11. Because there are only a few parties interested in purchasing the building and the land, and because the municipality cannot find any comparable buildings that might function

as a benchmark in this respect, the municipality decides to engage a valuer to determine the building's market price. The municipality can now sell the building; however, it is not entitled to sell the building under this price.

12. The price is still relatively high, despite the location of the building and the municipality's intentions to convert part of the building into social housing. Because of the high price, there is only one project developer interested in the building: Urban Life Company. This company is quite a large player and is active throughout the country. The project developer would like to purchase the building for an amount under the taxation value. The project developer has the intention to build both private sector and social housing apartments, however, on the condition that the municipality provides the company some financial aid. The municipality is not allowed to lower the price and, as a result, has to look for another suitable solution – one that is not contradictory to the state aid rules. De minimis aid is no longer possible: the project developer has already reached its limit.
13. In addition, the state aid rules provide for little possibilities to set up easily and quickly a mix of social and commercial housing which is actually state aid proof. With respect to the financing of the building of social housing, the municipality might consider to claim an exception for services of general economic interest (SGEI). In the event that the municipality opts for SGEI, the building of the social houses must be commissioned to the project developer as SGEI. The municipality is allowed to compensate the project developer directly for this. As long as the compensation does not exceed the limit laid down in the exemption decision for SGEI, the municipality is no longer obliged to follow a notification or application procedure for this project.
14. However, the SGEI option offers no solution for the realisation of the building's commercial owner-occupied and rented apartments. Because of the operating shortfall, it is questionable anyway whether these apartments can be realised in this neighbourhood at all. There are no exceptions to the state aid rules for the realisation of private sector housing. Therefore, the municipality must apply for approval first to support this part of the project. In other words, the municipality still has to follow a lengthy and administratively burdensome application procedure with an unsure outcome.

Conclusion:

Within the context of the European state aid rules, both the concept of market conformity and the market economy operator principle (MEOP) play a key role. This results in a **tension** between the requirements of operating in line with market conditions on the one hand and the municipality's public interests on the other: after all, private market participants would not be

guided by such interests and considerations. This concerns particularly the valuation regarding the purchase and sale of buildings and land. It can be hard for authorities to realise area developments projects in conformity with the state aid rules and to act in the public interest at the same time.

Annex 1.9 What-a-waste: from waste to commodity

The European Commission envisages a quick transition to a circular economy, in which waste materials are used to the greatest possible extent as basic materials for new products. In this context, the Commission has revised its regulations regarding the reuse of waste, with the aim of encouraging and accelerating the transition to a circular economy. In this process, innovation plays a key role. Cities and towns, companies and local and regional authorities all contribute to new ways of recycling waste.

New ways to reuse waste are continuously invented, resulting e.g. in new materials that may be used in agriculture. The European Waste Framework Directive provides for the criteria on the basis of which materials can be attributed the status of end-of-waste. Such materials may be included in the Waste Framework Directive, by which these substances are recognised as end-of-waste throughout the EU and can be traded more easily.

However, this practice seems to anticipate European regulations regarding waste management. In the event that a new possibility for sustainable reuse is discovered, the waste material involved is not automatically included in the Framework Directive. Therefore, member states are forced to focus primarily on the possibilities under national legislation. Member states can set up national end-of-waste schemes and can test each individual case against end-of-waste criteria. Still, the approach and the rules may vary for each member state, which interferes with cross-border trade. Both authorities and businesses are forced to follow lengthy, legally complex and expensive procedures in order to be able to use or trade a new recycled waste material.

To illustrate this with an example:

1. Water authority Y reuses part of its waste materials. In this way, the slurry remaining after the waste water has been cleaned, can be reused as a fuel for biogas plants.
2. On the basis of a new technological development, struvite can be extracted from the slurry of waste water. This substance can be used as an agricultural fertilizer. Struvite can either be used directly on the land or as a basic material for chemical fertiliser.
3. It is the district water authority's intention to extract struvite from slurry and to sell it directly to farmers, as well as to a factory that turns it into chemical fertiliser. Before the struvite can be traded, the water authority must know which requirements it must meet with respect to the substance's transport, sale and use.
4. For this purpose, it should first be examined whether it is a waste material or not. As yet, struvite is not included in any European end-of-waste scheme, notably the European Waste Framework Directive.

Therefore, the assessment whether struvite can be attributed the status of end-of-waste, must be performed at the level of the water authority's member state.

1. In the event that the water authority determines, in accordance with end-of-waste criteria and the national legislation, that the struvite is indeed an end-of-waste product, the substance will fall under the European regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). The substance must be registered under REACH. This will take quite some time and, apart from that, the research data must also be paid. As soon as the registration is completed, the water authority can opt to market the struvite as either a fertilizer or a basic material.
 - To subsequently sell the struvite as a fertiliser, the substance should meet the requirements of the Fertilisers Regulation or be included in the national legislation regarding fertilisers. In the former case, the substance can be marketed throughout Europe; in the latter, it can only be marketed in the country of origin. As yet, struvite is not included in the EU Fertilisers Regulation, so, as a consequence, it is necessary to follow the national legislation. As each member state has different rules, the marketing of the struvite will be considerably impeded as a result. In most member states, struvite is not yet allowed as fertiliser.
 - In the event the water authority wants to sell the struvite as a *commodity*, e.g. to a fertiliser manufacturer, it can ignore the fertiliser rules.

2. In the event the water authority's member state determines that struvite is a *waste material* and cannot be attributed the end-of-waste status, it may still be possible to market struvite. In this case, the water authority can opt to market the struvite as either a fertilizer or a basic material:
 - In some member states, waste material may also be marketed as fertilisers. In the event struvite is included in the national fertiliser legislation, it may be used as fertiliser in the member state of origin.
 - It might be hard to market the substance as a commodity, because the waste regulations with respect to transport need to be complied with and because the buyer must have a licence to process waste materials. This licence should also contain a reference to the European list of waste. However, this list does not include struvite as yet, as a consequence of which it becomes unclear which requirements must actually be met.

Conclusion:

- a. The everyday practice of the circular economy is developing fast and in an innovative manner. These developments anticipate the European regulations with respect to fertilisers and waste. Because the status of struvite (waste or end-of-waste?) has not been laid down in the European legislation, there is a considerable **lack of clarity** with respect to the requirements that must be met for the marketing and use of struvite.
- b. Local and regional authorities have to follow a **lengthy, complex and expensive path**, before they can actually market, transport and use struvite.
- c. In absence of European end-of-waste legislation on struvite, and because the substance has not been included in the fertiliser regulation, member states will have to turn to their national legislation. This legislation may differ per member state, which **interferes with the European internal market**.

Annex 2 Approach

To gain more insight into the issues regarding European laws and regulation – i.e. the challenges with which local and regional authorities are confronted in daily practice – the Ministry of the Interior and Kingdom Relations has commissioned *Europa decentraal* to make an inventory of the various issues that local and regional authorities deal with when implementing European legislation.

Bridge! has been based on the expertise of *Europa decentraal*. This EU Law and Policy Institute was founded in 2002 and provides information and advice to local and regional authorities on European law and legislation. The institute's approach is a combination of quantitative and qualitative methodologies. *Europa decentraal* disposes of a database with over 12,000 questions (and answers) pertaining to Community law and various European policy fields – questions which have been submitted by Provincial authorities, municipalities and water authorities. This database has been guiding for Bridge! Both the quantitative trend analysis and the analysis of questions regarding different policy themes have been carried out on the basis of this database.

We will further explain this approach in this annex. To begin with, we will describe the various project phases. After that, we will briefly explain the purport of the quantitative and the qualitative approach.

Project phases: a combination of a qualitative and a quantitative approach

This inventory has been executed over a period of nine months (September 2015 - April 2016) and comprises two phases in which quantitative and qualitative methodologies have been applied. The results of the quantitative analysis serve as the foundation for the qualitative analysis. Each phase consists of multiple activities:

Phase 1: Qualitative analyse of examples

- Inventory and identification of examples of issues:
 - on the basis of the database of *Europa decentraal*;
 - during brainstorm sessions with experts working at administrative level at local and regional authorities and umbrella organisations.

- Further detailing of the identified examples during expert meetings with experts working at administrative level at local and regional authorities and umbrella organisations.
- Testing of the detailed examples:
 - a bilateral legal test by experts working at administrative level at local and regional authorities, umbrella organisations and ministries;
 - testing in the Steering Committee by representatives at MT level of the Ministry of the Interior and Kingdom Relations and the umbrella organisations (the Association of Dutch Municipalities (VNG), the Association of the Provinces of the Netherlands (IPO), the Association of Regional Water Authorities (UvW), the Dutch network of the 4 larger cities (G4) and the Dutch network of the 32 larger municipalities (G32)).

Phase 2: Quantitative analysis of trends and policy themes

- Execution of a quantitative analysis on the basis of the database of *Europa decentraal*:
 - development of the number and type of questions and the information requirements regarding EU law by local and regional authorities during the period 2003-2015;
 - development of the number and type of questions and the information requirements regarding EU law regarding themes with relevance for the European Urban Agenda during the period 2014-2015.
- Describing and interpreting the results.

Phase 1: Qualitative analysis of examples

Bridge! contains nine concrete examples of issues that Provincial authorities, municipalities and water authorities are confronted with during the implementation of European law and regulation. During the qualitative phase, these case examples of legal issues have been identified and worked out in further detail. The examples are derived from *Europa decentraal*'s database and network, and have been tested by practical experience. In this section, we will describe our approach.

Database as foundation

For twelve years now, the institute's helpdesk has received questions on a daily basis about the application of European legislation and policy. Most questions have been answered by *Europa decentraal* by simply providing the correct interpretation of the regulations. Every so often, the solution to a certain issue may be a little more complicated, e.g. in the event that the relevant European regulations turn out to be unfeasible in practice as a result of unintended side-effects. Thanks to the institute's database and extensive network, as well as the direct contacts of the institute's experts with various experts working at local and regional authorities, *Europa decentraal* is able to identify concrete issues with respect to European law.

Further detailing with help of experts from local and regional practice

The examples examined have been directly derived from the questions we have received from municipalities, Provincial authorities and water authorities. In order to safeguard the quality of the contents and the representativeness of the examples, the involvement of the various umbrella organisations (IPO, VNG, UvW, G4 and G32) as well as their members (municipalities, Provincial authorities and water authorities) has been of paramount importance. Their involvement and input has been safeguarded by means of *actual discussions* with experts from local and regional practice on the identified issues.

The case examples of legal issues have been further detailed on the basis of input by both experts working at *Europa decentraal* and experts working at administrative level at Provincial authorities, municipalities and water authorities, as well as their umbrella organisations and the ministries involved. This input has been gathered in various ways:

- during interactive brainstorm sessions with experts working at a number of local and regional authorities;
- during expert meetings with experts working at a number of local and regional authorities, umbrella organisations and the relevant ministries at national level;
- subsequently, the case examples have been submitted once more on a bilateral basis to a number of experts working at local and regional authorities and the relevant ministries.

Finally, the case examples have been discussed for examination in a Steering Committee under the leadership of the Ministry of the Interior and Kingdom Relations, including representatives working at MT level at the Ministry itself or at umbrella organisations (VNG, IPO, UvW, G4 and G32). This Steering Committee has played an advising role.

Presentation and communication on the basis of legal contents

Europa decentraal has set itself the objective of presenting complex issues with respect to European legislation in a recognisable way, however, with a solid legal substantiation. Therefore, in order to present and communicate legal information in an attractive way, we had to make some solid efforts, not just with respect to contents, but also with respect to communication. After the examples were gathered and examined in greater detail, the practical issues involved were remodelled into a fictitious form, meant to illustrate the practical situation as aptly as possible. As a result, the examples cannot be traced back to any individual questioner. Subsequently, the examples have been visualised by a graphic designer in the form of striking infographics.

Phase 2: Quantitative analysis

The quantitative analysis has been executed from 2003 till 2015. However, a more thorough quantitative analysis of the European-law issues with respect to various policy themes has been performed on the data of the years 2014 and 2015. This concerns policy themes that are relevant to the European Urban Agenda, as well as other policy themes that generated questions from local and regional authorities. In this section, we will explain this second and final phase.

Composition of questions investigated

Since 2002, all staff members of Dutch ministries, municipalities, Provincial authorities, water authorities and local and regional partnerships can ask questions to the *Europa decentraal* helpdesk. These questions have been gathered in the institute's database. Over the last fourteen years, the total number of questions has run up to over 12,000. Each year some 1,000 questions are asked. One third of these questions is asked at meetings and answered at the spot.

The research has been based solely on questions that were answered in writing. The total amount of these questions is 10,554 (i.e. exclusive of questions asked orally at meetings). Out of these questions, a selection of 9,697 cases from the database was deemed suitable for reporting for purposes of this quantitative research.

This concerns the number of questions that has been explicitly asked by staff members of government institutions at national, municipal, provincial and water authority level. A group of over 700 questions has been excluded. These questions were asked during the period by different organisations outside the scope of this inventory, e.g. other semi-public institutions, EU institutions or Flemish (semi-) public institutions.

Throughout the report, we refer to ‘the number of questions per year’. This number is based on the number of questions which has been *answered* in the respective year. So if a question was submitted at the end of 2006, but answered at the beginning of 2007, it has been registered as a question from 2007.

Concerning the analysis of policy themes relevant to the Urban Agenda, Europa decentraal was able to report on those particular themes local and regional authorities asked questions about.

Anonymity and independence of the results

Europa decentraal is a semi-public foundation: neutral, impartial and exclusively based on factual information. In Bridge!, only objective information, which is accessible for everyone, is published. The results are freely available and can be used by anyone who is interested. For this reason, the results in this report are always in anonymous form and cannot be traced back to any Provincial authority, municipality or water authority, nor to any specific case. *Europa decentraal* will always maintain strict confidentiality with respect to any question from a local or regional authority. In order to safeguard this confidentiality, the institute applies the principle that only the institute itself has access to the database.

Annex 3 List of sources

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Colophon

Bridge! is a publication of:
Kenniscentrum Europa decentraal
t. +31 (0)70 - 338 1090
i. www.europadecentraal.nl

Commissioned by:
The Ministry of the Interior and Kingdom Relations

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May 2016



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