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Land Use, Mobility and Environment

The fragile/resilience city represents a topic that collects itself all the issues related to the urban risks and referred to the different impacts that an urban system has to face with. Studies useful to improve the urban conditions of resilience are particularly welcome. Main topics to consider could be issues of water, soil, energy, etc..

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## Rotterdam

### Climate Change Adaptation Strategy



THE RESILIENCE CITY / THE FRAGILE CITY.  
METHODS, TOOLS AND BEST PRACTICES.



ROTTERDAM CLIMATE INITIATIVE  
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## THE RESILIENCE CITY/THE FRAGILE CITY. METHODS, TOOLS AND BEST PRACTICES

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# TeMA

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Land Use, Mobility and Environment

## THE RESILIENCE CITY/THE FRAGILE CITY. METHODS, TOOLS AND BEST PRACTICES

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## CALL FOR PAPERS: TEMA VOL. 11 (2018)

### The Resilience City/The Fragile City. Methods, tools and best practices.

The fragile/resilience city represents a topic that collects itself all the issues related to the urban risks and referred to the different impacts that an urban system has to face with. Studies useful to improve the urban conditions of resilience (physical, environmental, economical, social) are particularly welcome. Main topics to consider could be issues of water, soil, energy, etc.. The identification of urban fragilities could represent a new first step in order to develop and to propose methodological and operative innovations for the planning and the management of the urban and territorial transformations.

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# TeMA

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## EXPECTATION MANAGEMENT AT THE LOCAL SCALE LEGAL FAILURE OF PUBLIC PARTICIPATION FOR LARGE URBAN PLANNING PROJECTS

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### ABSTRACT

The complex nature of large urban planning projects often results in delays or budget overruns. One of the causes is conflicts of interests between stakeholders. Recent planning failures in projects, due to limited public participation, sparked debates to increase citizen participation in formal planning procedures. This paper investigates how planning law supports public participation in large planning projects that cross municipal borders. The juridical analysis of German and Dutch codified law is based on four elements: literal content, institutional positioning, historical context, and teleological meaning of a legal text. The paper furthermore distinguishes four rationales for participation in planning: support, legitimization, improving plan quality, and education. The analysis shows that these rationales cannot be comprehensively regulated by codified law. Law can enhance the legitimate character of participation, but currently lacks the ability to organize support, improvement of planning, and education at the regional planning level.

### KEYWORDS:

Participation; planning law; regional planning; Germany; the Netherlands

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## 本地范围的期望管理

关于大型城市规划项目之公众参与的法律失败

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### 摘要

大型城市规划项目的复杂性往往导致项目延迟或预算超支。原因之一就是利益相关者之间的利益冲突。由于公众参与有限，因此，近期的规划项目失败引发了提高公民参与进正式规划程序的辩论。本文探讨了规划法是如何支持公众参与跨市界的大型规划项目。德国与丹麦成文法律的法理分析是基于四个要素：字面内容（文字内容）、机构职能（制度定位）、历史背景、法律文本的目的意义。本文就参与规划进一步区分为四个理论：支持/资助、合法化、提高规划质量与教育。分析表明，这些理论不能通过成文法律进行全面的规范。法律可以加强参与的合法性，但目前缺乏在区域规划阶段中组织支持/资助、改进规划与教育的能力。

### 关键词：

参与；规划法；区域规划；德国；荷兰



## 1 INTRODUCTION

“We planned, it worked” – with this special signboard, the City of Portland proudly announced a successful spatial planning project, which included a downtown plan for retail, parks, transit improvements, and housing efforts. This is worth mentioning, as planning projects often fail to keep within the foreseen time and budget. In particular, large spatial planning projects, such as the renewal of a station area in city centres (Spit & Bertolini, 1998) or the construction of new large infrastructure (e.g. for rail or energy) tend to struggle with time and budget. Moreover, when large urban planning projects reach beyond municipal boundaries in terms of impact and dimension, planning processes are long and dynamic (Dziomba & Matuschewski, 2007; Ibert, 2007). Municipalities have difficulty coping with the complex nature of these projects (Needham, te Raa, Spit, & Zwanikken, 2000). One of the issues that delays projects is conflicts of interests between invested stakeholders. Examples for such planning disasters are the renewal of the main station in Stuttgart, Germany, which raised furious and unexpected protests (Selle, 2011) or the station area in Utrecht, the Netherlands, where public appeals by citizens delayed train and tram facilities for several years. In recent years, there have been claims to include the need for better formal participation procedures in urban planning (Durner, 2011). Public participation in large urban planning projects is criticized as too vague because citizens’ actual influence is regarded as limited (Dziomba & Matuschewski, 2007; Enserink & Monnikhof, 2003). This raises discussion on participation and its regulation (Durner, 2011).

Citizen participation is an important element of the spatial planning process (Irvin & Stansbury, 2004, p. 56). Coined as participative planning (Innes & Booher, 2000), the communicative turn in planning (Healey, 1996; Huxley, 2000), or collaborative planning (Innes & Booher 2010) in recent decades, this has become a trend towards more participation and stakeholder involvement in spatial planning (Wegener, 2012). Planning theorists tend to support the idea of more citizen involvement in planning processes (Edelenbos, 2000; Ritter, 2005)—a claim often related to the “ladder of citizen participation” by Arnstein (Arnstein, 1969). It is assumed in the academic debate that as citizen participation increases, the democratic legitimacy of planning increases as well. It is also assumed that it increases the quality of the outcome of planning, or that it creates support for a certain planning process (Hartmann, 2012). Citizen participation is sometimes celebrated as a goal itself in spatial planning (Brownill & Carpenter, 2007b; Dreijerink, Kruize, & van Kamp, 2008; Fagence, 1977; Silver, Scott, & Kazepov, 2010). In planning practice, however, participation often merely becomes “ritual dances” and “window dressing” (Edelenbos, 2000; Wolsink, 2003), where motives and purposes of participation often remain unclear (Hartmann, 2012; Leino & Laine, 2011), and the role and the power of citizens in participatory processes are vague (Donders, Hartmann, & Kokx, 2014). So there is a tension between planning theory on participatory planning and citizen participation in practice. Modes of participatory and collaborative governance that are favoured by planning theory seem not to fit in real world situations, which becomes obvious in large urban projects where citizen participation—or the lack thereof—regularly delays and hinders process and projects.

Planning law formally determines the boundaries and frontiers of urban planning (Stierand, 1993; Yang & Pandey, 2011). Participative governance is often regarded as a realm outside of land use regulations (Dziomba & Matuschewski, 2007; Hartmann & Needham, 2012; Ibert, 2007). Planners tend to pursue different planning objectives when it comes to participation (Albrechts, 2004; Campbell, 1996; Healey, 2002; Needham, 2006; van Straalen, Janssen-Jansen, & van den Brink, 2014). The impact of law on participatory and collaborative governance has often been marginalized or neglected in planning theory (Hartmann & Spit, 2015; Healey, 2003), but the legal perspective provides an understanding of how spatial planning processes function and are embedded in a certain legal context. The general assumption in this paper is that the law is a key systemic variable for the functioning and robustness of participative governance (Hartmann & Needham, 2012). Applying the method of the juridical analysis, this contribution compares two planning laws—the German and the Dutch—and their respective citizen participation, to trace the rationale of

participation in planning law. The central question is: to what extent does planning law support public participation beyond municipal boundaries?

In both countries, Germany and the Netherlands, participation is deeply embedded in planning legislation. A commentary on German participation regulations mentions that participation is an instrument for increasing democratic quality by citizen involvement in public decisions. It can also be seen as a process of legitimizing state activity, and serves as a tool to increase information (Battis, 2007). In 2011, the Dutch parliament proclaimed that public participation in spatial planning is of national interest for three reasons: it leads to broader public support, to a better quality of decisions, and to a more democratic process (Tweede Kamer der Staten-Generaal, 2011). The emphasis on participation during large projects in the new Dutch Environment and Spatial Planning Act (*Omgevingswet*)—to be enacted in 2021—highlights this proclamation by the Dutch parliament. Furthermore, the European Union wants its members to stimulate participation (Directive 2003/35/EC: providing for public participation for the drawing up of certain plans and programmes relating to the environment, 2003). We assume that the general arguments in this paper might be applicable to other countries with codified law as well as to the wider international debate on the relation between participation and regulation.

## 2 METHODOLOGICAL APPROACH: JURIDICAL ANALYSIS OF PARTICIPATION REGULATIONS

In this paper, codified law in Germany and the Netherlands are taken as starting points to analyse the relation between participation and planning law. In principle, there are two viewpoints when analysing legal texts. The first presumes a legal text to be an imperative itself, inducing a normative impact on the regulated subject through its wording. The second viewpoint perceives a legal text merely as “raw material for the communicative process” (Engberg, 2002), which needs to be contextualized by interpretation in concrete situations. Germany and the Netherlands are examples of the first legal tradition (the latter would be the Anglo-American interpretation). As such, our analysis of codified law aims to reconstruct the intention of a legislator (Stelmach & Brožek, 2011). Von Savigny developed a method of juridical analysis of codified law (Ifsen, 2004) using four elements: literal content, institutional positioning, historical context, and teleological meaning of a legal text (Stelmach & Brožek, 2011). This methodological approach is applied in this paper to German and Dutch planning law concerning citizen participation.

Our analysis is based on land use regulation, the German Federal Building Code (*Baugesetzbuch, BauGB*) and the Dutch Spatial Planning Act (*Wet Ruimtelijke Ordening, Wro*). It is important to note that German and Dutch planning laws only determine procedural aspects of participation. The *BauGB* and the *Wro* both emphasize early-stage participation and a display of the formal plan at the municipal level. The regulations are quite elaborate and sophisticated for the display of land-use plans, but both leave some scope for the specific realization of early-stage participation. We have analysed the legal texts and the official parliamentary explanations (German *Drucksache* and Dutch *nota van toelichting*, and its commentaries of both the *BauGB* and *Wro*). Furthermore, we have studied related and constitutional law of both countries (German constitutional law: *Grundgesetz*, German Regional Planning Act: *Raumordnungsgesetz (ROG)*, Dutch General law on administration: *Algemene Wet Bestuursrecht*, and Dutch decree on regional planning: *Besluit Ruimtelijke Ordening*). This analysis is complemented by secondary data from other studies and an extensive literature review.

## 3 JURIDICAL ANALYSIS: PARTICIPATION IN GERMAN AND DUTCH PLANNING LAW

The juridical analysis consists of four steps. Accordingly, the first of the following four sections focuses on the content of the regulations for participation in land-use planning in Germany and the Netherlands. The second analyses the institutional positioning of the regulations: what are the superior laws and what is the

position of the regulations? Third, the historic development of participation regulations will be elaborated upon by contextualizing the law within the political debate. Fourth and finally, we will look for the teleological meaning of the regulations. This implies that we want to identify the legislator's intended purpose to recognize gaps between intentions and their realization. These four steps will help conclude how the law constrains or supports participation in large spatial planning projects. In each step, the two countries are addressed individually.

### 3.1 THE LITERAL CONTENT

#### *GERMANY*

In Germany the Federal Building Code (*Baugesetzbuch, BauGB*) is the most important law for municipal land-use planning. Municipal land-use planning is the central and most important instrument of spatial planning (besides regional planning) (Krautzberger, 2007). The Federal Building Code demands that municipal bodies regulate land use within their administrative territory; the municipality may not plan beyond this territory (Krautzberger, 2007). Besides the Federal Building Code, the Regional Planning Act (*Raumordnungsgesetz, ROG*) regulates spatial planning above the municipal level.

Section 3 of the Federal Building Code (BauGB) contains the most important regulations for participation procedures in German land-use plan procedures. German spatial planning law distinguishes here between early-stage participation and the plan display. Early-stage participation is open to the "general public" (Pahl-Weber & Henckel, 2008).

Nobody may be excluded from this early-stage participation (Berghäuser & Berghäuser, 2009). The text of the law also implies that this formal participation step needs to be taken in early phases of the project to create an opportunity to seriously take alternatives into consideration (Braam, 1999) and to incorporate hitherto neglected or overlooked arguments, facts, and ideas in the planning process (Bergäuser & Berghäuser, 2009).

The display of the draft plan ('Planauslegung') serves to collect recommendations for and objections to the plan (Pahl-Weber & Henckel, 2008). It is an independent and free-standing procedural step in the planning process (Battis, 2007). It is not so open in terms of both content and citizen participation. Section 3.2 BauGB determines that the display of the plan needs to be announced in a customary manner in the municipality. This formulation was intended as a minimum requirement for the announcement, but it also implies that it is not necessary to include citizens beyond the municipal boundaries in the participation process. Every citizen who puts forth a comment, proposal, or objection for or against a plan is entitled to an individual response. Only when more than 50 similar comments have been handed in, will the municipality respond with a public announcement of their answers (Battis, Krautzberger, & Löhr, 1997). This regulation is quite relevant for large projects because in such cases, the total of 50 comments is easily exceeded. In contrast to the early-stage participation, the plan display is quite strongly predetermined by law.

Yet, certain large projects may not fall under the regulations of the BauGB, but rather under the ROG—the Regional Planning Act. In general, the Regional Planning Act is not binding for individuals, but only for administration. An exception is the '*Raumordnungsverfahren*'; according to Article 15 of the law. It describes a special planning procedure for large projects.

This means that not all large projects require such a special planning procedure, but only projects that are relevant beyond municipal boundaries or have a supra-local impact. At a first glance, public participation on the regional level has many similarities with the municipal planning, but an important difference is that on the regional level there is no early-stage participation, only a single-step procedure for public participation (Spannowsky et al. 2010). In addition, participation as regulated in the Regional Planning Act is not obligatory, but a "can" regulation. Planning authorities may decide if, when, and to what extent the general public will be involved.

### *THE NETHERLANDS*

The most relevant Dutch law on participation in land-use planning is the “Wet ruimtelijke ordening” (Wro) from 2008, which replaced the WRO (in capital letters) (van der Schoot, 2011). The new Wro aims at strengthening decisions at the local level, deregulation, and accelerating planning procedures (Kamphorst, Pleijte M., Kistenhas, & Kersten, 2008). Accordingly, it provides more flexible and more open planning processes (Kamphorst et al.), which strengthens the citizens’ role (Tweede Kamer der Staten-Generaal, 2007, p. 14). Like the German BauGB, the Dutch Wro is a national-level law. Only the constitution and treaties or other international rules are superior (Taekema et al., 2011).

The Wro prescribes the procedure for the land-use plans (bestemmingsplannen) in which the first and last phases are relevant: the first is a fairly open participation process, similar to the German early-stage participation, and the last is the plan display (‘terinzagelegging’), which is an opportunity to raise final objections. Besides binding land-use plans, the Dutch planning system under the Wro also prescribes ‘structuurvisies’. These are strategic plans on the national, regional, and municipal level, which are only self-binding for the respective authority. For participation procedures, the Wro offers no binding regulations (van der Schoot, 2011, p. 57). The Wro is the most important planning law in the Netherlands (Faludi, 2000). The ‘Algemene Wet Bestuursrecht’ (AWB) (the general law for the actions of public administration) and the ‘Besluit ruimtelijke ordening’ (Bro) (spatial planning decree) specify the regulations laid out in the Wro. The Bro prescribes the details of the announcements for early-stage participation and the formal plan display (1.3.1 Bro). Section 1.3.1 Bro then refers to the AWB, which enables the administration to determine according to section 3.12 AWB who is, in fact, entitled to take part in early-stage participation (van der Schoot, 2011, p. 27). Therefore, the procedure is not open to everyone. The details of the formal procedure of the plan display are also regulated in the AWB, as section 3.8 of Wro prescribes (Needham, 2007) which are: the announcement, the length of the display, the entitled group, and the procedures (3.11 AWB). To be entitled to participate, a person or organization must have an interest that is directly affected by the intentional consequences of the plan in question (Needham, 2007).

## 3.2 THE INSTITUTIONAL POSITIONING

### *GERMANY*

In Germany, the competence to govern within their own territory is an important and much valued principle. It is founded in German constitutional law (section 28 Grundgesetz, GG). Accordingly, German participation in land-use planning has a strong emphasis on municipal territory. Although Battis et al. (2007) see in the formulation of section 3.1 of the BauGB a right to participate for every legal body or natural person that might be affected, or that has any other interest in the plan (including from outside the municipality) (Battis, Krautzberger, & Löhr, 2007), the fact that the municipality determines who potentially might be affected (Battis et al., 2007) makes participation beyond municipal boundaries unlikely. At the regional level, which is relevant for large spatial projects, it is important to recognize that since the last reform of federalism in Germany, regional planning belongs to the “concurrent legislation”. This means that the states in Germany may deviate from the national regional planning law and make their own regulations on participation. Finally, all 16 states have a regional planning law that involves the general public in regional planning procedures in one way or another (Spannowsky et al. 2010), whereas in some states participation is obligatory for regional planning. Because of the legal character of the regional planning legislation in Germany, however, participants may only object and comment on the spatial impact of projects and plans, but they may not comment or object against private interest (those are regulated at the local land-use planning level). This requires the planning authority to filter only those comments and objections that are in the general public interest (Spannowsky et al., 2010). This makes public participation on the regional level in Germany labour-intensive and complicated.

### *THE NETHERLANDS*

Besides the written formal rules, the Netherlands has a tradition of unwritten law. Of great importance are the “rules of responsible public administration” (Needham, 2006) or “principles of good governance” (Taekema et al., 2011). Although they are not formally determined, courts recognize them as an accepted codex for governmental activities (Needham, 2006). Therefore, they have considerable impact at the local level. Such rules include that an agency should honour earlier promises, make decisions carefully, and consider all relevant facts (Taekema et al., 2011). This also implies that citizens’ objections to plans are taken seriously, even if they are raised outside the formal planning procedures. Like in the German case, in Dutch practice, major decisions about a plan are often already made before a project enters the formal planning procedure in accordance with the Wro (de Leede, Smaal, & Spit, 1993). This means that citizens are often confronted with detailed plans for large projects, rather than being involved in the design of the projects. Although regional and national planning authorities explain this as a necessity, due to careful preparation (complicated calculations, mandatory environmental impact assessments), citizens can consider this a closed process.

## 3.3 HISTORICAL CONTEXT

### *THE INFLUENCE OF EU LEGISLATION*

The Aarhus Convention of 1998 can be seen as a milestone for participation in planning (Dreijerink et al., 2008). It is an international treaty on participation in environmental planning, which initiated the 2003 passing of a European Union directive to support participation (Directive 2003/35/EC, 2003). National planning laws in Germany and the Netherlands have implemented it in their BauGB and Wro (respectively WRO). It is important to recognize that both laws were influenced by the same superior EU legislation, because this partly explains the similarities in both planning laws. Although land-use planning in Germany and in the Netherlands is in many respects crucially different (Tennekes & Harbers, 2012), regulations for participation in land-use planning pursue considerably similar approaches in both countries.

### *GERMANY: DARE DEMOCRACY, BUT SPEED UP PROCEDURES*

The German Chancellor Willy Brandt’s State of the Nation Address from 1969 is often quoted as the origin of public participation in Germany (Selle, 2010). With his famous sentence “Wir wollen mehr Demokratie wagen”—we want to brave more democracy—he argued for more co responsibility for citizens in different policy fields (Bundeskanzler Willy Brandt, 1969). In accordance with this, and with Arnstein’s idea of participation as a form of citizen empowerment (Arnstein, 1969; Fagence, 1977, p. 4), the 1976 reform of the Federal Building Code aimed at a more intensive and earlier involvement of citizens in the planning process (Söfker, 2009, p. XIII).

Later, arguments against participation arose in reference to the efficiency of planning procedures (Battis et al., 2007). In the 1980s, the Western German parliament discussed the participation of citizens in regional planning procedures, while the government was concerned that this might affect the efficiency of planning processes (Deutscher Bundestag, 1980; Deutscher Bundestag, 1986). Also before the major reform in 1998 (‘BauROG’), participation was under pressure from attempts to speed up processes, but finally the regulations for participation were strengthened (Battis et al., 1997). In 2006, a law was passed to accelerate planning and reduce participation processes (Söfker, 2009), making the tension between participation and plan efficiency quite obvious.

And today? In today’s planning practice, participation is often conducted as a formality as Selle (2010) concludes. A “culture of participation” is missing in spatial planning (Berghäuser & Berghäuser, 2009). Some authors even speak about “Kommunikationsverweigerung”—refusal to communicate—on the authorities’ part (Selle, 2010). It seems that, in the last few years, spatial planning practice has become almost fatalistic



towards participation, as is quite adequately illustrated by an early observation from Cvetkovich & Earle: "public involvement" in practice often means holding a hearing primarily to inform the public, after the fact, of a decision that has been made" (Cvetkovich & Earle, 1992). Accordingly, the commitment of German administrations is regarded as deficient (Selle, 2010).

*THE NETHERLANDS: 'SNELLER EN BETER' (QUICKER AND BETTER)*

As in Germany, different phases of participation can be identified over time. Participation has historically developed not only from spatial planning practice but rather from major political arguments and milestones in legislation, projects, and societal change (van Coenen, de Rob, & Johan, 2001). In the positivistic planning period after the Second World War, planning was predominantly technocratic, and not only in the Netherlands. Planners were assumed to know the public interest (Needham, 2007). In addition, 'pillarization' framed Dutch society at this time: society was split into subgroups along religious and socio-economic lines. The period is considered to have been characterized by a passive political attitude among Dutch citizens. By the end of the 1960s, 'depillarization' began to nurture new forms of participation (Michels, 2006).

Van Coenen et al. (2001) investigated how participation evolved in the period between 1970 and 2000 in the Netherlands (Yang & Pandey, 2011). They distinguished three phases during that time span in which participation had different functions: in the phase between 1970 and 1980 it functioned as a catalyst for protests and to authorize democratic decision-making. This style of governance in environmental policy is regarded as top-down regulation (Schreuder, 2001). The period is also characterized as a time of rationalistic planning, solving engineering planning problems (Baum, 1977; Rittel & Webber, 1973). In this phase, public participation was only about specific aspects of planning.

Guided by the idea of preserving natural resources, stronger legal and financial constraints were installed in the 1980s (Schreuder, 2001). At that time, policymakers pursued a broader and more integrated approach towards participation (Dreijerink et al., 2008). The famous Dutch "polder model" became more of a principle in public decision-making (Needham, 2007; Schreuder, 2001). Van Coenen et al. (2001) identified the 1980s as a time when participation became an important formal instrument to legitimize governmental actions.

Then, until the 2000s, participation developed as an instrument of reconsideration in the negotiation of agreements and covenants (Schreuder, 2001). Trust and common interest were considered the driving forces of Dutch economic and environmental problem solving (Schreuder, 2001). Meanwhile, land-use plans gradually became a less important planning instrument in Dutch planning practice because they were considered too inflexible. The requirement to be both a plan and a juridical ordinance made it difficult to react flexibly to new developments (Buitelaar, 2012) so the exemption procedures ('vrijstellingsprocedure') of former section 19 Wro became popular (van der Schoot, 2011) and often replaced the land-use plan itself. Participation was obligatory for this procedure only from 1999 onwards (van Buuren et al., 1999). From 1999 onward, every legally binding spatial planning procedure included participation in the formal procedures, including early-stage participation and a plan display.

A study of participation in 2006 advises that regulations in the Dutch Spatial Planning Act need to be adjusted to facilitate better participation (Tweede Kamer der Staten-Generaal, 2008). Accordingly, the law was revised in 2008. It strengthens the role of citizens in formal planning procedures (Tweede Kamer der Staten-Generaal, 2007). In 2011, the Dutch parliament proclaimed that public participation in urban planning is of national interest, as it leads to more democratic planning processes (Tweede Kamer der Staten-Generaal, 2011). At the same time, governmental agencies wished to accelerate planning procedures (Kamphorst et al., 2008). This is expressed by the term used by the Commission Elverding: "quicker and better"; accordingly, the Crisis and Recovery Act of March 2010 shortened planning procedures. This required smooth and well-functioning citizen participation processes, but simultaneously decreased the ability to appeal to municipal plans (for specific projects). Michels concluded that although several approaches aimed to improve participation have been discussed in the Netherlands, the "traditional

hierarchical approach to policymaking” has not been revised (Michels, 2006). Still, in the past few years, a counter-movement to participation that aims to speed up planning processes has been the trend.

### 3.4 TELEOLOGICAL MEANING OF A LEGAL TEXT

#### *GERMANY AND THE NETHERLANDS: SIMILAR PROCEDURES*

Roughly spoken, the participation procedures for land-use plans are quite alike in the Netherlands and in Germany. In both countries, formal participation is organized procedurally, and the procedures are similar. In broad terms, the participation regulations in both Germany and the Netherlands pursue a “linear and sequential” planning process (Enserink & Monnikhof, 2003). This is not surprising, because Dutch law was inspired by German legal thinking (Taekema, de Roo, & Elion-Valter, 2011). A “linear and sequential” planning process clearly determines the planning steps where the public is involved and where it is implicitly excluded. However, a less sequential process is required, such as a participatory co-design (Enserink & Monnikhof, 2003). The basic idea of such a process is not to separate participation from the design process; but participation is envisaged as accompanying the whole planning process. Such a concept seems highly appropriate, since a procedure with just two occasions for formal participation (at an early stage and at the end of the planning process) seems outdated, and certainly not suitable for changing stakeholders, large areas, complexity, uncertainty, and the long duration of planning processes for large projects.

The question of who may participate in a planning process has a crucial impact on the result of the participation (Ibert, 2007). The early-stage participation and the plan display under both laws—the BauGB and the Wro—are related to the formal proceedings of land-use plans at the municipal level. Consequently, the regulations on participation also refer to the territory of the municipality. Large projects are here considered as exceeding the territory of the municipality in size, importance, or effect. However, regulations for participation do not reach beyond municipal boundaries. Particularly in the case of large projects, this can be crucial: most large projects unfold their positive effects on a large spatial scale, whereas the negative effects most often affect local people directly on a local scale. For example, a huge new inner-city shopping centre might bring nuisances such as traffic jams, noise emissions, or economic threats upon shops in the direct neighbourhood, but it produces jobs, convenient shopping opportunities, and economic growth on a large spatial scale, which may even exceed the regional level. Furthermore, as large planning processes are very long and dynamic, municipalities—burdened with implementing participation—have difficulty in coping with them (Needham, te Raa, Spit, & Zwanikken, 2000). Public participation in such large urban planning projects is criticized as too vague because citizens’ actual influence is regarded as limited (Dziomba & Matuschewski, 2007; Enserink & Monnikhof, 2003). When trying to understand citizen participation, the issue of the right scale is crucial (Crow, 2009). Often, participation in such projects is reduced to pure information regarding already decided issues (Dziomba & Matuschewski, 2007).

## 4 LEGAL POSSIBILITIES TO PARTICIPATION IN LARGE SCALE INFRASTRUCTURE PROJECTS

Earlier (see paragraph 1), we distinguish four purposes for participation in planning: support, legitimization, improving plan quality, and education. In this section we discuss how these purposes are taken up in German and Dutch planning law and what that entails for large projects. Our analysis shows legislators are not very concise in their definition of what they want to achieve with participation. Rather, multiple and partly contradictory purposes of participation are mentioned in policy documents. Achieving one purpose (e.g., increasing support) means neglecting or at least not focusing on other purposes (e.g., increasing plan quality). Participation thus always remains imperfect, and an optimal balance between these partially contradictory purposes needs to be struck.

Still, we have looked at the four purposes of participation as mentioned above. First, we identified support as raising the number of citizens who agree with the plan. Even though historical analysis shows participation in planning has increased, it does not match the requirements and realities of large projects. Decisions are often already fixed before the formal planning procedure starts. Second, achieving legitimate participation would entail having a majority of involved citizens that agree to the plan. Our analysis shows that the legal emphasis on the municipal level does not suit large projects with effects beyond municipal territories, especially in the Netherlands, as our analysis shows that even in early-stage participation procedures, the government can choose whom to involve (and whom to exclude). Third, for improving plan quality, one could argue that open participatory processes and early-stage participation will improve the quality of the plan, as more and diverse stakeholders are involved. Our historical analysis shows initial improvement, but the recent focus on the formal plan display in large projects could reduce open participatory processes again. As such, we are curious to see if the new Dutch Environment and Spatial Planning Act—aimed at more flexible and inclusive planning processes—can turn the tide. Fourth, the formulations in the BauGB and the Wro are not adequate to satisfy an ambition of education, especially in large projects, especially since the historic development of participation in both countries has emerged from political debate and not from planning practice or citizen protests. This helps to understand the struggle among planning practitioners to implement sufficient participation, which is particularly visible in large projects.

## 5 DISCUSSION: RATIONALES FOR PARTICIPATION

There is some confusion about the rationale for participation (Brownill & Carpenter, 2007a). “Civil servants are often confused about the role and function of participatory practices in urban planning” (Leino & Laine, 2011). Although it is not easy to identify one single rationale for participation, it remains possible to identify several reiterated and important motives. From planning theory, we drew four different rationales of citizen participation in planning processes. It should increase the (public) support for a decision, assist in legalizing plans, improve the quality of a decision, and raise awareness for certain processes and projects, or educate civil society on planning processes (Brownill & Carpenter, 2007b; Donders et al., 2014; Dreijerink et al., 2008; Enserink & Monnikhof, 2003; Hartmann & Spit, 2016; Leino & Laine, 2011; Wesselink, Paavola, Fritsch, & Renn, 2011).

Although land-use planning in Germany and in the Netherlands is in many respects crucially different (see also Tennekes & Harbers, 2012), regulations for participation in land-use planning pursue similar approaches in both countries. Participation regulations in Germany and the Netherlands do not fit large projects reaching beyond municipal boundaries. The juridical analysis shows law considering participation does increase the legitimacy of plans. Still, one could wonder if creating a majority by choosing who to involve is the most fair manner to address participation. Increasing the number of stakeholders to increase public support conflicts with increasing plan quality. It is not necessary to have many stakeholders, but it is necessary to involve stakeholders who are informed and who can add their (lay) knowledge to the project. Increasing the plan quality in this way is more likely to create support for the project. In this respect, the planners involved in large scale projects need facilitative law, rather than law dictating the number of stakeholders involved. Finally, to increase plan quality and add to the number of informed stakeholders, more education, in general, is vital. Yet, planning law cannot force education on stakeholders, so facilitating civil society in communication and understanding of large urban projects will have the largest yield.

Previously we argued that planning law formally determines the boundaries and frontiers of urban planning (Stierand, 1993; Yang & Pandey, 2011). We conclude that law is indeed a key variable for the functioning of participation in planning, especially legitimacy of planning processes (Hartmann & Needham, 2012). Still, we

argue other forms of governance are required to facilitate participation in large projects: regulations that focus beyond municipal planning procedures.

The commitment of regional or state public authorities is crucial. The analysis above crucially uncovers a feature of planning law and participation: viable participation for large spatial planning projects cannot be comprehensively regulated by codified law but merely facilitated. Law can enhance the legitimate character of participation, but currently lacks the ability to organize support, improvement of planning, or education at the regional planning level.

Finding approaches to creating or to increasing such commitment requires analyses outside the realm of planning law or a major change in planning law itself. Planning law for the most part focusses on the local scale, especially in relation to participation. If citizen participation were to be legally enforced in large urban projects, planning law itself needs restructuring towards the regional level or at least an ability to accommodate cross boundary projects. If we have a first look towards the new Dutch Environment and Planning act, which aims to stimulate citizen participation in large scale projects, we see that the law is still oriented at the local scale.

The new Act suggests that regional planning is possible, but regulation is established in such a manner that it counteracts regional enforcement via law. As such, commitment of regional and state public authorities to facilitate citizen participation is a key variable for the success of large urban projects.

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