Sources and categories of legal acts — The Netherlands

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I. Introduction

Before giving an analysis of the sources and hierarchy of law in the Netherlands, it should be stated that the Netherlands belongs to the states with a continental-European judicial tradition. This means that the law is primarily to be found in written rules.

Nevertheless judge made law plays an important role in the Dutch legal system: it interprets the written law, it fills the gaps in written law and develops general principles of law, especially in the field of administrative law. Examples of these principles are the principle of equality, of legal security, of non-retroactivity and of legality (in French: le principe de la légalité).

The second preliminary remark is that the Netherlands does not possess a constitutional court or other court that is competent to test the constitutionality of acts of parliament (section 120 Const.). From this point of view the Netherlands is similar to the United Kingdom.
II. Overview

The Netherlands legal system consists of a set of rules which can be distinguished by:

* rules elaborated on supranational and international level, i.e. EC-law and treaties;
* rules elaborated on the level of the Kingdom of the Netherlands (the federation of the Netherlands, Aruba and the Dutch Antilles), i.e. the Charter for the Kingdom of the Netherlands (Statuut voor het Koninkrijk der Nederlanden) and "Acts of the Kingdom" (rijkswetten).
* rules elaborated on the central level of the Netherlands in Europe, i.e. the Constitution (Grondwet), acts of parliament (wetten), Royal decrees or Orders in Council (algemene maatregelen van bestuur), ministerial regulations (ministeriële regelingen) and other regulations, enacted by independent agencies (zelfstandige bestuursorganen) or other offices instituted by act of parliament. Furthermore the administrative guidelines (beleidsregels) should be mentioned. They function sometimes as rules binding upon the administration;
* rules elaborated on decentralised level. Here one should distinguish between territorial and functional decentralisation.

Territorially decentralised rule-making authorities are the provincial and municipal councils, which enact provincial and municipal bye-laws (verordeningen).

Functionally decentralised rule-making authorities are the organs of the Water Boards and the organs of the Public Industrial Organisation. Both categories are competent to enact bye-laws (verordeningen).

Except for the administrative guidelines all these rules are legally binding rules, on the public authorities, on the citizens or on both.

Beside these "classical" rules so called collective agreements between organisations of employers and employees (collectieve arbeidsovereenkomst) can be declared binding upon certain categories of employers and employees by decision of the government.

In the following parts of this report the rules of supranational and international law will - generally spoken - not be discussed. The same applies to the Charter for the Kingdom.

The Sources of the rules discussed here can briefly be described as follows:

* Amendments of the Constitution are made pursuant to Chapter 8 of the Constitution. First a bill (eerste lezingswet) has to be voted by both Houses of Parliament. Then both Houses are dissolved after which general elections take place. Finally both newly elected Houses must vote the same text with a two thirds majority (tweede lezingswet). As in case of every bill, ratification by the government is required. Although this procedure seems to be rather cumbersome, the Constitution is regularly amended.
* Acts of parliament (wetten) can be put before the Second Chamber (Tweede Kamer) by the government or by members of the Second Chamber. In practice the initiative comes nearly always from the government. The second Chamber can amend a bill, reject it or vote it. If it is rejected, the procedure has failed. If the Second Chamber supports the bill, it is put before the First Chamber (Eerste Kamer) which can only vote or reject the bill. If it rejects the bill, the procedure has failed. If it supports the bill, the government ratifies it and the legislative procedure is completed. Naturally an act of parliament must be officially published to be binding.

* Orders in Council (Royal Decrees; algemene maatregelen van bestuur) are made by the government, i.e. the King acting jointly with one or more ministers.

* Ministerial regulations and administrative guidelines are made by a sole minister.

* Provincial and municipal regulations (verordeningen) are generally enacted by the provincial and municipal councils (directly elected organs).

* Regulations (verordeningen) of the Water Boards and the Public Industrial Organisation are enacted by their organs, designated by Act of Parliament or other rule.

The hierarchy of the Netherlands complex of rules can be fitted in the following scheme:

EC-law; treaties
Charter for the Kingdom
Constitution (Grondwet)
Act of parliament (wet)
(general principles of law)
Order in Council (algemene maatregel van bestuur)
Ministerial regulation (ministeriële verordening)

Provincial bye-law (regulation) (provinciale verordering)
Public Industrial bye-law (regulation) (waterschapsverordering)
Municipal bye-law (regulation) (gemeentelijke verordening)
To this scheme it should be added that the (civil, criminal and administrative) judges test every lower rule to a higher one, even to unwritten principles of law, except for the act of parliament, which, as it was already mentioned, can not be tested against the Constitution (nor against the Charter for the Kingdom or unwritten international law). On the other hand it can be tested against EC-law and directly applicable (self-executing) provisions of international treaties.

III. Identifying the legislatory function

Under section 81 Const. the power to make acts of parliament is assigned to the government and the States General acting jointly. Neither the Constitution itself, nor any other constitutional law, determine what the content of an act of parliament must or may be. In principle the legislature is free to draft an act as it wishes. But one must not consider it as sovereign.

There are limits as to what an act of parliament may contain. Thus chapter 8 of the Constitution lays down the special procedure for modifying the Constitution which was discussed earlier. In addition the legislature may not include anything which conflicts with fundamental rights or other constitutional provisions. For example, under the Constitution certain powers are attributed to other offices, such as the government or the judiciary, to the exclusion of the legislature, according to the separation of powers idea. It is also assumed nowadays that the legislature must take general principles of law into consideration and that it may not make "Einzelfallgesetze" even though there may be no judicial control as such over this.

Constitutional law does not only indicate orders which the legislature may not make, it prescribes as well those which it must take. The Constitution frequently refers to the (national) legislature as the one which sets standards. This is true, for example, in the case of many fundamental rights, for the provisions in connection with the organisation and powers of central government offices, and in the case of financial provisions (budget, taxes and the money system), the approval of treaties and the declaration of a state of emergency. The organisation and granting of further powers to many offices such as the Council of State, the General Chamber of Audit, the judicial offices, the national ombudsman and the decentralised authorities has to go through the legislature. The legislature is also charged with regulating electoral law, national taxation and the money system. Section 107 of the Constitution is especially important for guaranteeing legal uniformity. It instructs the legislature to compile general codes to regulate civil law, criminal law, and civil and criminal procedural law. The same section also requires the legislature to lay down general rules of administrative law. Finally, the legislature has to regulate the legal position of civil servants.

One must guard against the idea that the Constitution, with its frequent references to the legislature, gives a complete picture of the activities of the latter. Many subjects
which are not mentioned at all in the Constitution are regulated in acts of parliament, or in orders which are founded on acts of parliament.

From a strict constitutional point of view the legislature is free to regulate itself in these fields or to delegate most of the matter to other organs. But here the "Aanwijzingen voor de regelgeving", guidelines for the rule-making function, made by the prime minister (decision of 18 November 1992), should be mentioned. According to these - from a doctrinal point of view internal - guidelines the following topics have to be regulated as much as possible in an act of parliament:

* prescriptions which are the basis for authorisations, licences etc.;
* prescriptions which order decentralised authorities to act in shared power (medebewind);
* prescriptions which institute new public authorities;
* prescriptions concerning the administration of justice;
* prescriptions concerning civil or administrative sanctions;
* prescriptions which attribute control powers or investigating powers;
* prescriptions concerning the mutual rights and duties of the citizens;
* prescriptions which aim at procuring the citizen procedural safeguards against the exercise of powers by the public authorities.

In practice these guidelines are not always followed consequently. Except for the provisions of the Constitution the legislature feels itself rather free to regulate a certain topic itself or to delegate the regulation (partly) to other organs.

IV. Parliamentary and governmental legislation; delegation

Like other western states The Netherlands also knows the phenomenon of rule-making by offices other than parliament, or by parliament and the government together. We confine ourselves here to rule-making at central government level. Rule-giving by the decentralised authorities will be dealt with later on.

The question of whether the legislature is competent to delegate rule-making powers to other offices, such as the government or a minister, is answered in principle in the Constitution. Where the Constitution assigns competence to the legislature or instructs it to regulate a certain matter, it uses fixed terminology. If a form of the verb regulate (regelen) is used, or the noun rule (regel), or if the expression by or pursuant to an act of parliament (bij of krachtens de wet) is used, then the legislature is authorised to instruct or leave further rule-making to another office. If the Constitution does not use any of these terms, then the legislature must handle the matter designed by the Constitution itself, though the regulation of details may be left to others. In that case it is not a question of delegation but of execution. It will be clear that the question of
whether there has been unauthorised delegation or authorised execution is not always easy to answer.

In the context of problems surrounding the rules issued by offices other than the legislature, section 89 of the Constitution deserves attention. The most important provision in it lays down that rules issued by the government or a minister which can be enforced by penalties (in the sense of criminal law) must be founded upon an act of parliament. Furthermore the penalties to be imposed must be laid down in the act itself. Thus this section prevents the government or a minister from autonomously decreeing rules carrying a penalty unless those rules are founded upon an act of parliament. Autonomous rules which do not carry a penalty are theoretically possible according to section 89 Const. Nevertheless they are very rare.

It should be noted that delegated rules issued by the government or a minister are very common. Those issued by the government are usually called Orders in Council (algemene maatregel van bestuur), those issued by a minister, ministerial rules (ministeriële regelingen). The legislature is not able to deal with everything itself and the legislative process is too cumbersome to meet the demands for flexibility and speed. The need to implement EC guidelines quickly has also led to many and wide delegation provisions in acts of parliament.

The delegation of rule-giving powers to the government or a minister does not mean that parliament is excluded altogether, however. In the first place the minister or cabinet remain responsible for their orders. In the second place several acts of parliament which delegate rule-making powers also include constructions which guarantee a measure of parliamentary influence upon the delegated rule-giving. This kind of "controlled delegation" may take different forms, such as approval of the delegated rule by act of parliament or the replacement of the delegated rule by an act of parliament before a certain date. Other constructions can be found too (see also VII).

Policy rules or administrative guidelines (beleidsregels) are a special phenomenon. These are rules which an administrative authority lays down as a form of self-regulation over the exercise of its administrative powers. One area where policy rules operate widely concerns subsidies. In strict doctrinal terms they only operate internally and do not create any rights or duties for citizens. Nevertheless recently the judge has assumed that certain provisions contained in policy rules may furnish the citizen with a claim against the government. This means that according to the judge rules can have external effect without being based upon attribution or delegation by the Constitution or by an act of parliament.

All that has been said leads to the conclusion that the government has an important rule-giving role which is often not limited to the regulation of details, but regularly deals with important topics of government activity or with the citizens' rights and duties.

Up to this point only the delegated rule-making power of central public authorities has been discussed. As it was said before the (territorially and functionally) decentralised authorities exercise regulatory powers too. But these powers are not "general" as the legislature's are. In the first place the Constitution reserves a number
of matters for the central rule-making institutions. Thus the exercise of many fundamental rights may not be restricted by decentralised regulations. Other matters are of a typical central character such as civil and criminal law, the money system, treaties, defence and the administration of justice.

In the second place, the decentralised authorities may not regulate matters which have been already regulated on a higher level and their bye-laws may not contravene higher rules.

With respect to the competences of the decentralised authorities, Netherlands constitutional law distinguishes between autonomous powers (autonomie) and shared powers (medebewind). Regarding the first category, section 124 of the Constitution speaks of leaving the decentralised authorities the power to regulate and manage their own affairs; while with regard to the second it states that regulation and administration can be required by or pursuant to an act of parliament. In areas where it has autonomous powers the decentralised institution conducts its own policies, deciding for itself its aims and means. Where it is a case of shared powers, it carries out a policy which has been laid down by higher governmental institutions.

Matters which are defined as their own affairs is not fixed, however in the last century the notion that central government, provincial and local government had more or less mutually exclusive areas of work was still being defended in the literature. This theory has not enjoyed any support for a long time now, however. In practice it is usually political factors and considerations of expediency which determine which area of government will take care of a particular government responsibility.

As the years have gone by central government has taken over more and more policy areas which originally fell within the autonomous sphere of the provinces and local authorities. These shifts have usually been effected by means of central legislation. In some cases regulations were drawn up which excluded the decentralised administrations. In other cases a central rule came into force requiring the regional and local offices to cooperate in the execution of a policy through shared power. Thus the autonomous competence which was lost is compensated in the form of shared power. Another possibility is that the decentralised authority would retain supplementary powers.

Although the governing bodies of the provinces and municipalities have relinquished their autonomous powers in many policy areas to central government, their administrative and rule-giving activities have not been reduced. On the contrary, their sphere of work has considerably expanded due to the assignment of all kinds of shared power tasks. One could speak of "delegation" in these cases.

Most of the time rule-making power belongs to the institutions of the central state or to decentralised authorities, as has been described above. But sometimes an act of parliament attributes some rule-making power to other institutions like independent agencies or professional organisations. This subject will be treated later on.

In principle Dutch constitutional law does not require to frame the delegation. When the Constitution allows delegation, the legislature is free to establish the scope of it. Only section 104 of the Constitution, regarding taxes, orders the legislature to regulate itself the main aspects of national taxes.
Chapter 7 of the Constitution reflects the decentralised structure of the Netherlands. It supposes the existence of provinces and municipalities and opens the possibility to create water boards and other functionally decentralised bodies. Chapter 7 also regulates the main institutions of the provinces and municipalities, the way their members are elected and their main competences.

Four (from a dogmatic point of view) organic acts of parliament contain the more detailed provisions: the Provinces Act, the Municipalities Act, the Water Boards Act and the Public Industrial Organisation Act. But none of these acts sets goals for the activities of the decentralised authorities. Whenever there is question of goals, they are set by specific acts of parliament (or other rules), which regulate a specific item, like the protection of the environment, the protection of health, housing etc. They form all cases of shared power: the higher authorities formulate the goals, the lower ones use their constitutional and statutory competences to reach these goals.

The rules set by the higher authorities apply directly within the decentralised entities. So there is no need for transformation of these rules into decentralised law. The only thing the decentralised authorities are bound to do is the implementation of the higher rules and the achievement of the goals set by them.

The higher authorities are entitled to differentiate between the decentralised institutions, whenever they require them to act in shared power. The above mentioned organic acts expressly state that differentiation can take place among the provinces and among the municipalities.

The question of whether the central authorities leave much or little room for the decentralised authorities or whether they regulate their activities in detail or not is considered as a purely political question. Constitutional law does not contain any boundaries on this point. During the last ten years though one can observe a certain tendency towards decentralisation for financial and other reasons like the wish to reduce the size of central government.

The relationship between primary and secondary EC-law and the Dutch national legal order is clear. The judiciary and constitutional doctrine follow the rulings of the Luxemburg Court, i.e. Van Gend en Loos and Costa Enel. This means that according to Dutch constitutional law EC-law prevails over all national law, even over the Dutch Constitution. So every national rule, be it a constitutional or an other one, is not applied when it is incompatible with EC-law, even although it was made in respect of the procedural and substantive requirements of the national legal order (see also § 12).

VI. Organic Law

In Netherlands constitutional law organic laws do not exist. In doctrine though the expression is used regularly: organic laws are statutes which the Constitution
refers to explicitly. They have to be made by the legislature. These laws follow nevertheless the same legislative procedure as any other act of parliament.

Some acts of parliament have to be voted by a two-thirds majority of the votes cast: amendments of the Constitution at the second reading, the act of parliament by which a person is excluded from the succession to the throne, the act of parliament by which a successor to the throne or a new King is appointed, the act of parliament fixing the financial statute of the King, of the members of the Royal House and of the members of Parliament and finally the act of parliament approving an international treaty which deviates from the Constitution. These acts are considered as very important for the (functioning of the) Netherlands constitutional system.

Although Netherlands constitutional law does not mention organic laws, some acts of parliament are considered as "general acts" (algemene wetten). This means that the legislature is supposed not to deviate from these acts, except for special circumstances or reasons. In this case it has to motivate expressly why the deviation is necessary. Some examples of these "general acts" are the Provinces Act, the Municipalities Act and the General Administrative Law Act (Algemene bestuursrecht). It must be said though that in positive law these "general acts" are not different from other "normal" acts of parliament. They follow the same procedure; their legal value is the same too.

VII. The regulatory process

In the constitutional law of the Netherlands there is no requirement that a regulation may only contain a framework. As it was said before, the legislature is in principle free to make the act it wants.

The question whether sub-delegation is allowed depends on the wording of the act of parliament. When an act of parliament only permits delegation it uses the expression (for example): by Order in Council this or that shall be regulated. When it wants to allow sub-delegation it states (for example): by or pursuant to Order in Council subject X must or may be regulated. The choice between the possibility of only delegation and the possibility of delegation including sub-delegation is often not clearly motivated. It seems to depend largely upon departmental customs.

Practical problems have arisen sometimes when the wording of the act of parliament did not allow subdelegation and nevertheless other authorities than the delegataris enacted rules binding upon the citizens. Sometimes the judiciary declared these rules not applicable because of unauthorised subdelegation. In some other casus the judge labeled these rules executive provisions. In the latter cases they were considered as legally enacted and for that reason binding provisions.

The Netherlands do not possess states or regions like Germany, France, Spain or Italy. The form of state is a decentralised unitary state. We mentioned already the provinces, communities, water-boards etc. According to the Provinces Act and the Municipalities Act the government is bound to consult the provincial and municipal
authorities about draft acts of parliament, draft Orders in Council and other drafts of central regulations which require the exercise of shared power (medebewind) or which alter to a considerable degree the tasks and competences of the decentralised authorities. Beside these legal requirements the central authorities often consult the decentralised authorities or their representative organisations (Vereniging van Nederlandse Gemeenten; Interprovinciaal Overleg) on legislative or policy matters.

Conflicts between the central and the decentralised authorities are resolved in several ways: by negotiation, by the government itself and - sometimes - by a judicial decision. Moreover, the government is entitled to annul every decision of the decentralised authorities and some of their decisions have to be approved by the government or by a minister before entering into force.

The figure of controlled delegation has already been discussed briefly. Sections 35 and following of the "Aanwijzingen van de regelgeving" state that this kind of delegation may only take place for special reasons. The "Aanwijzingen" distinguish several forms of controlled delegation, varying from a postponement of the entering into force of the delegated rule to the requirement of approval or replacement of the delegated rule by an act of parliament.

The parliamentary participation is never exacted by a sole committee, but always by the plenum of one or both Houses.

Notwithstanding the "Aanwijzingen", controlled delegation may in theory be instituted in every case of delegation. The legislature is free to prescribe it. As far as we know there is only one general provision on controlled delegation, i.e. section 1:8 of the General Administrative Law Act, which refers to the implementation of EC-Law by Orders in Council or by ministerial regulations.

As in many other European States the Netherlands possess a great number of advisory councils or other advisory institutions. Numerous acts of parliament require their consultation before the final draft of an act of parliament or an Order in Council can be made. The most important advisory council is the Council of State which has to give advice on every bill and every draft Order in Council. But the Council of State can not be considered as an institution representing the (interested) public. On the other hand there are Councils that can be qualified as (more or less) representative institutions, such as the National Economic Development Council (Sociaal-Economische Raad), and the Education Board (Onderwijsraad). Hundred of other advisory bodies may or must give their advice on specific matters. Their tasks are regulated in many specific acts of parliament.

Beside these legally regulated forms of advice the government and the Second Chamber regularly invite administrative agencies, specialists, interested groups or individuals to give their opinion on concept-legislation. In some rare cases drafts of complete bills have been made by a group of specialists, wether or not in cooperation with ministerial law officers. Some examples are (parts of) the new Civil Code and the text of the Constitution, which dates from 1983.

Sometimes it happens that individuals or associations challenge a regulation (except for the act of parliament) for violation of their participatory or advisory rights and in some cases the judge declared for that reason the regulation illegal. An example is
VIII. Incorporation of autonomous rule-making into the law

During the last decade the problem of "deregulering" (deregulation) has been a political issue. Several political parties criticize the number and the complexity of government - made law. One of the solutions in their opinion would be the promotion of autonomous rule-making by specialised organisations and (groups of) industries. This autonomous rule-making takes in practice several forms, like systems of quality-assessment of products and environmental measures within certain (groups of) industries. Sometimes an act of parliament requires such systems or measures. In other cases they are based on a "convenant" (a kind of contract) between the public authorities and private parties. But the juridical position of these "convenanten" is not always clear. Many times it is doubtful whether they are enforceable in law or whether they contain only a gentlemen's agreement. Moreover they may not deviate from or replace official legal rules.

Normally regulations of public authorities do not refer to autonomous standards. Nevertheless the judiciary may apply them in cases of tort law or of interpretation of civil law notions like good faith.

The position of autonomous rule-making is somewhat problematic for the following reasons. Firstly the procedures of autonomous rule-making regularly do not take into account the position of third parties which eventually is affected by the autonomous rules. Secondly it is not always clear which sanction can be applied when the required autonomous rules are not made or when they, having been made, are not applied or obeyed. In the third place the system of the administration of justice may be altered. Generally spoken decisions of the public authorities can be attacked before the administrative judge. This system is undermined when decisions are based on autonomous rules. In this case the "ordinary" judiciary will be competent to resolve conflicts. We mentioned already some problems provoked by the "convenant".

IX. Recognition of professional rules as law or semi-law

Section 134 of the Constitution enables the legislature to create public bodies for the professions and trades. Some of these bodies possess rule-making powers. Their rules are binding upon the members of these bodies.

The Netherlands legal system procures some examples of professional organisations. Thus the Act on the profession of advocates (Act of 23 June 1953, Stb.
instituted the "Nederlandse orde van advocaten". This Act contains rules regarding the order and discipline of advocats and procurators. A special Court is competent to rule on conflicts between the "Nederlandse orde van advocaten" and its members.

Another example of a professional organisation in the sense of the Constitution is the "Orde van registeraccountants", established by act of parliament of 28 June 1962, Stb. 258.

The regulations enacted by this kind of bodies are comparable with the bye - laws made by the provincial, municipal or water-board authorities. So they possess the same legal value as other regulations of public authorities.

Regulations made by professional organisations purely based on civil law have a completely different status. Many civil law organisations (i.e. of doctors, football-players etc.) enact disciplinary rules which are binding upon their members. These rules are in principle upheld within the organisation itself by disciplinary committees. Many times conflicts within the organisation are resolved there. But these regulations do not alter at all the competences of the ordinary civil and criminal judge. They apply, if necessary, the common civil and criminal law to the acts of the persons concerned.

X. Incorporation of collective agreements into the law

Agreements between the "social partners" are frequent. These agreements are called "collectieve arbeidsovereenkomst" (collective agreement). The agreements regulate various workers' conditions like salary, working hours, holidays, overtime hours, overtime rates etc. They cover many types of activities. Thus there are collective agreements for several sorts of industries, for nurses, for teachers etc. Without any further action from the side of the public authorities such an agreement is not law in the sense of a rule, but is only a (collective) contract between an (group of) employer(s) and his employees. But according to the "Wet op het algemeen verbindend en het onverbindend verklaren van collectieve arbeidsovereenkomsten" of 25 May 1937, Stb. 801 the government, on request of an employer or an association of employees, who are a party at the collective agreement, can decide to make a collective agreement order extending the applicability of a collective agreement to an entire industry or group of industries.

The juridical character of the collective agreement is changed by such a governmental order because the content of the agreement is unilaterally made binding upon persons or organisations who were not a party at the collective agreement. So the judiciary considers such a collective agreement as national law in the sense of section 99 of the "Wet op de rechterlijke organisatie" (Judicial organisation Act).

As far as we know collective agreements do not reach beyond the national borders. It is feasible they would reach beyond these borders as long as the government does
not extend their applicability to third persons living abroad and in as far the legal system of other countries does not prevent it.

XI. Administrative guidelines in (semi) federal states

The Netherlands is not a (semi) federal, but a decentralised unitary state. So strictly speaking this paragraph could be omitted. But even in the Netherlands the point is of some interest.

In relation to the territorially and functionally decentralised authorities the central government is not entitled to establish autonomously administrative guidelines which are binding upon them. According to Chapter 7 of the Constitution the decentralised authorities can only be bound by regulations and other decisions which are based upon an act of parliament. Nevertheless the central authorities autonomously establish guidelines which are indirectly binding upon the decentralised authorities. This happens in relation with the government's power to annul every decision of the decentralised (provincial and municipal) authorities and its competence to approve certain of their decisions. The government may then establish guidelines which indicate the cases and circumstances in which the government (probably) will exercise its power to annul or not to approve. Although these guidelines are legally not binding, their practical effect is more or less the same, the decentralised authorities not wanting their decisions to be annulled or not approved.

Other guidelines can be detected in the field of subsidies of the central government to the decentralised bodies: if the latter do not follow the guidelines, they will not receive the wanted subsidy.

The administrative guidelines do not follow any formal procedure, although the decentralised authorities may be involved in drafting or advising them.

There are many mechanisms of coordinating the practice of the provinces' and municipalities' offices.

In the first place the unifying and coordinating function of the central statutory law should be mentioned. In the second place the power of annulment and of approval plays a coordinating role. In the third place the "Wet gemeenschappelijke regelingen" of 20 December 1984, Stb. 667 (Joint Schemes Act) enables the decentralised authorities to work together. They may even be forced to cooperate by a governmental decision, based on the Joint Schemes Act. Furthermore, in recent years there has been new legislation to create conurbations with their own form of local government.

Administrative guidelines can be challenged at the (administrative) courts. The judge can declare them non-applicable because of violation of the written and unwritten law.
XII. Hierarchy of national and EC law

As we have seen before the Netherlands legal system and doctrine follow the famous Van Gend en Loos and Costa Enel rulings of the European Court of Justice. According to these rulings EC law prevails over national law. Thus the Netherlands accept the priority of EC law over every sort of national law, including the Constitution itself. The majority of the doctrine even upholds the thesis that sections 93 and 94 of the Constitution, which regulate the relationship between international law and national law, do not apply (or are not necessary) in relation to EC-law. EC-law being supranational law, it applies directly in and prevails over the national legal order, notwithstanding constitutional provisions.

The conclusion is that according to the Netherlands juridical practice and constitutional doctrine it is not imaginable that a court holds an EC legal act inapplicable because of violating nationally guaranted basic rights or being ultra vires, be it before or after the European Court of Justice has found the act to be in accordance with EC basic rights and competences.