



Argumentatie voor een keuze. Een pragma-dialectische analyse van
gemotiveerde keuzes in overheidsbesluiten over m.e.r.-plichtige projecten
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ARGUMENTATIE VOOR EEN KEUZE

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Summary

The goal of this study is to precizate the pragma-dialectical instrumentation of analysis by refining it for the reconstruction of argumentation in support of a choice in governmental Records of Decision (ROD) for which an Environmental Impact Assessment (EIA) was conducted. Environmental Impact Assessment is a process employed by the authorities when proposals are submitted by the government or a private project proponent that may cause serious damage to the environment, such as the construction of a residential area, a windmill park or a large infrastructure project. The project proponent of such a proposal must – in parallel to one of the mandatory decision-making procedures – go through the EIA procedure, in which research will be conducted to ascertain what possible effects the proposal and any relevant alternatives may have on the environment. Findings are reported in an Environmental Impact Statement (EIS), which the ‘competent authority’ (the governmental agency charged with the decision-making) is obliged to use when deciding between the alternatives evaluated. The decision is announced and motivated in a public document which must specify, amongst other things, in which way the different alternatives and the information about the environment were taken into consideration.

The governmental Record of Decision for which an Environmental Impact Assessment was conducted – in short, the ‘ROD based on EIA’ – is a document that may be regarded as an argumentative activity type: a communicative situation with an argumentative character that is conventionalized through a certain set of institutional demands and restrictions. The RODs fulfil a function in the institutional context of decision-making based on EIA, in which the texts must meet specific demands. In an ROD, standpoints are adopted pertaining to decisions taken and the choices that led to that decision. As such, these choices must be motivated according to certain rules.

Before a definitive decision is made, it is standard practice that a draft ROD is published to allow anyone who wishes to respond to the preliminary decision to have their say. Any parties concerned may object to or appeal a definitive ROD in a separate procedure. However, formulating a proper, critical response is far from simple. In regard to the motivation of choices, RODs often contain ambiguities: standpoints concerning choices made are missing from the text, the argumentation does not clarify which alternatives were scrutinized and which pros and cons were weighed. In addition, the manner in which this assessment was conducted, is seldom made explicit. This is undesirable, since these kinds of ROD are usually concerned with projects that may have a considerable negative impact on surrounding environment and on local communities. As such, there is a need not only for guidelines with which to critically evaluate the argumentation pertaining to the choices made, but also for writing this type of text. Before any such guidelines may be developed, it must first be clarified how argumentation supporting a choice within this particular activity type may be analyzed. An analysis of the standpoint, the arguments and their interrelationship will allow for a precise evaluation of the components of the argumentation. Additionally, it will come to light where a text may be unclear for the readers, and may form a base upon which sound writing advice may be developed.

This study focuses on the analysis of argumentation in support of a choice in RODs based on EIA. The starting point is the instrumentation of analysis that is part of the pragma-dialectical argumentation theory as developed by van Eemeren and Grootendorst (van Eemeren and Grootendorst, 1984, 1992, 2004; van Eemeren, 2010). A pragma-dialectical analysis entails that the discourse is, as much as possible, reconstructed in terms of the ideal model of a critical discussion, which here serves as both a heuristic and analytical instrument. An important product of the analysis is the reconstructed argumentation structure of the discourse. Because the analysis of RODs based on EIA gives rise to certain specific problems, it is necessary to fine-tune the pragma-dialectical instrumentation for this particular activity type.

In this study, a contextualized precization of the pragma-dialectical instrumentation of analysis will be realized with which the argumentation in support of a choice in an ROD based on EIA may be systematically analyzed. The aim here is to contribute to pragma-dialectical research in argumentation in institutionalized contexts by showing how the instrumentation of analysis may be effectively contextualized for a specific argumentative activity type. Additionally, more precise instrumentation of analysis may serve as a starting point for the development of an evaluation method as well as for writing advice for argumentative practice in everyday life.

A couple of limitations should be pointed out. In RODs, multiple choices are made and motivated in succession; this means that multiple standpoints are presented in regard to a choice. This study is restricted to the reconstruction of individual standpoints and the supporting argumentation. The way in which the standpoints may be part of a larger argumentation structure of the overall decision is not taken into consideration. Another limitation is that the study is focused on RODs for which the original EIA regulations date from 1986 (and the related implementation regulations from 1987). The instrumentation of analysis is contextualized for the institutional context according to those legal regulations.

The contextualized precization will be realized in two ways. First, in the theoretical part of this study (Chapters 2-5), the pragma-dialectical ideal model will be refined by converting it to an 'analytic structure' for argumentation in support of a choice in RODs about projects that require an EIA, which may serve as a guideline for the analysis. Second, in the empirical part (Chapters 6-9), a refinement of the tools available in pragma-dialectics for performing the analysis will be carried out. The application of the analytic structure is studied qualitatively using a corpus of RODs.

In the theoretical part, it will first be determined which factors that link to the institutional context of 'RODs based on EIA' must be included in a contextualized instrumentation of analysis (Chapter 2). The institutional context is formed by two procedures that run parallel to and are integrated with each other: a decision-making procedure and the EIA procedure. An argumentative characterization clarifies that the activity type of ROD plays a part in argumentative discussions that are held in the integrated procedure between the competent authority and other actors, among which are the project proponent, advisors and other active participants. The main issue is whether or not the proposed activity may or must be performed in a specific location and in a specified manner that is in accordance with certain stipulations. In the ROD (and also already in the draft ROD), the authority adopts a standpoint pertaining to the matter, which means that the difference of opinion is (temporarily) resolved, yet has the potential to instantiate a new discussion in the form of objections and appeals procedures. The relevant procedures make demands on the ROD, the choices presented therein and the

argumentation in support of those choices. The choices may pertain to whether or not the activity should commence, the location of the activity, and the manner in which it is to be performed. In the argumentation in support of the choices made, the competent authority is required to indicate what has been taken into consideration regarding the effects on the environment of the alternatives studied, as described in the EIS. From the perspective of a critical discussion, institutional requirements may be regarded as procedural starting points that must be taken into consideration in the reconstruction of the argumentation. These requirements and other institutional factors must be included in the analytic structure.

Next, a global structure will be established based on the pragma-dialectical argumentation theory which can serve as a guideline for the analysis of argumentation in support of a particular choice (Chapter 3). The argument scheme for pragmatic argumentation provides some starting points. Argumentation is considered to be pragmatic when a certain goal or course of action is recommended (or discouraged) in the standpoint and the argumentation to support that standpoint mentions (dis)advantageous effects or consequences of that goal or course of action. The argument scheme itself contains no assessment of positive and negative effects, or of differing measures. Schellens (1985), in an 'extended standard scheme for pragmatic argumentation', developed the possibility of such an assessment based on several premises. It presumes a rule of conduct which comes down to a cost-benefit analysis: from a given number of alternatives, the course of action that delivers the highest possible benefit at the lowest possible cost is preferable to any of the other alternatives; additionally, all alternatives must be feasible and permissible. However, choices may also be made according to other rules of conduct or 'decision rules' (rules a person may use in making a decision). For example, a choice may be made for the alternative that scores most favorably on the greatest number of criteria. This is why no single decision rule is presumed in the global analytic structure that is established for argumentation in support of a choice, but rather the possibility to reconstruct argumentation based on several decision rules. The structure consists of three levels: one main standpoint in which a choice is brought forward from among the alternatives; argumentation pertaining to the assessment of the available alternatives and the decision rule utilized; and sub-argumentation pertaining to the pros and cons of the different alternatives.

The analytic structure will be further refined based on insights into systematic decision-making, derived from theory of choice in psychology (Chapter 4). In the process tracing approach, procedural properties of the decision-making process are used to record the steps taken by decision-makers in reaching a decision. The procedural properties of a decision-making process are systematically connected. Based on, among other things, the nature of the information utilized (the level of measurement), the amount of information processed and the order in which this occurs (per alternative or per evaluation criterion), it is possible to deduce the strategy a decision-maker employs and which decision rules are utilized. Gallhofer and Saris (i.a. 1996) applied similar insights to the analysis of texts on political decisions with the aim of reconstructing the decision rule utilized. Their approach offers some starting points for developing the analytic structure, but it also highlights that the relationship between argumentation and insights in decision-making needs clarification and that more precise, text analytical directions are necessary for the reconstruction of the argumentation. Based on these insights from theory of choice, a general decision-making procedure may be established in the form of a model for systematic decision-making that is integrated into the analytic structure. Argumentation based on the systematic application of a certain decision rule may constitute a concrete instantiation of the analytic structure.

Subsequently, the analytic structure will be extended into an analytic structure for argumentation used in support of RODs in the context of EIA, using previously inventoried institutional factors (Chapter 5). The analytic structure takes the form of a schematic overview consisting of three levels: the standpoint pertaining to the choice, the argumentation pertaining to the decision rule and the sub-argumentation pertaining to the pros and cons of the alternatives under consideration. The argumentation pertaining to the decision rule consists of an argument in which the assessment is represented as a 'testing result' and an implicit argument containing the decision rule that indicates the connection between the testing result and the choice made. The sub-argumentation pertaining to the pros and cons consists of various components. There is an argument that denotes which criteria are utilized and there are arguments that pertain to the role of the criteria: criteria may be weighted or there may be certain demands that the different alternatives must meet. The arguments that contain the evaluation of the alternatives with regard to the criteria form an essential component and these evaluations are further supported by sub-(sub-)argumentation pertaining to information about the alternatives. Per level, the relevant components are expanded upon, as well as the way in which the components and arguments on the different levels interrelate within a structure. Per component, the constituent parts are differentiated and a standard form is available that allows for the unambiguous and uniform reconstruction of the component. The components have been made more precise by using the previously inventoried relevant institutional requirements, so that for example, the criteria to be utilized must contain environmental criteria. The integration of institutional requirements and other factors into the analytic structure allows for a more precise reconstruction that gives a faithful representation of reality.

The empirical part of the study focuses on the way in which the analytic structure is to be applied to RODs in practice. The application is studied using a corpus of existing RODs on seven projects for which an EIA was conducted according to the original regulations (from 1986). The textual material concerns RODs on various types of activities in the areas of infrastructure, waste disposal, commercial areas, residential housing and electricity generation. The RODs are part of various decision-making procedures conducted by various governmental authorities. All of the RODs studied were concerned with spatial matters (country and town planning), where a decision had to be reached on either a location (for example a residential or business area) or a route (such as a road or railway). Other documents that are part of the same institutional context were used as well, the most important of which is the EIS. Applying the analytic structure is illustrated using examples from the textual material.

Per component of argumentation in support of a choice, procedural directions are established that clarify how – using the analytic structure as a guideline – a sound reconstruction may be performed. In performing the reconstruction, indications from various sources must be utilized: the text (the passage of discourse containing the argumentation supporting the choice), the micro-context (the remainder of the document), the macro-context (the institutional context, the institutional requirements which have been included in the analytic structure) and the inter-textual context (documents related to the EIA procedure and the decision-making procedure). Additionally, the ways in which strategic maneuvering occurs in an ROD must be examined. The competent authority makes a strategic selection from the topical potential, attunes the text to audience demand and applies effective presentational devices. The possibilities available in making these choices are specific to the argumentative

activity type 'ROD based on EIA'. Determining that the competent authority is making a strategic choice may serve as either a confirmation of a performed reconstruction or as a reason to refine or amend it. Following this approach leads to a better and more nuanced justification of the reconstruction.

In the analysis, the standpoints in which a choice among the alternatives is expressed are reconstructed first (Chapter 6). It must be determined which choices are made in the text, taking into account the 'process-like' presentation typical for RODs. Furthermore, the choices to which the author adopts a standpoint must be determined. The constituent parts of standpoints that pertain to a choice may be reconstructed with the help of indications in the text and the different kinds of context. A textual formulation such as 'is/are preferable', for example, is a clear indication of a choice constituent. Additionally, recognizing strategic maneuvers may lead to indications for the reconstruction. If, for example, a choice is presented in an unclear fashion, this may be regarded as a means of 'covering up' that a certain alternative is chosen or that certain alternatives were eliminated in the process. An author employing this tactic may try to prevent criticism of a choice. In such a case, the strategic presentation serves as an indication for the reconstruction and results in a better justification of it.

After the choices have been reconstructed, a subsequent reconstruction must be performed of the sub-argumentation pertaining to the pros and cons of the different alternatives (Chapter 7). The sub-arguments are – just like the choices – frequently presented in a step-by-step process that works towards making the choice. Here, the leading principle in the reconstruction is the decision-making procedure as included in the analytic structure, in which it is presumed that an evaluation is based on set criteria and accords to a systematic approach. Aided by indications in the text and the context, a reconstruction may be performed of the different components: the criteria, the evaluations of the alternatives according to the criteria, and the supporting information regarding the alternatives. If, for example, a comparison table is included in the beginning of the ROD displaying the results of the EIS, this table offers micro-contextual indications as to the reconstruction of the criteria and the information regarding the alternatives. Additionally, attention must be paid to strategic maneuvers. Possible tactics include either overstating the advantages of the chosen alternative by selecting formulations that somewhat embellish the matter at hand or diminishing or 'covering up' of an advantage of an alternative that wasn't chosen, by for example leaving that particular advantage implicit. Indications of these kinds of strategic choices may contribute to a more precise and more sound reconstruction. The result of the reconstruction is an overview of the sub-arguments in the form of evaluations – pros and cons – per alternative. A precise structure of the sub-argumentation may only be established if and when the decision rule utilized has been reconstructed.

After the reconstruction of standpoints and sub-arguments, for every individual choice, the argumentation pertaining to the decision rule must be reconstructed. The components of the argumentation in the RODs are frequently implicit, and there are few textual indications to rely on for the reconstruction. The reconstruction of the decision rule must be established step-by-step, based on a combination of indications. The starting point here is the overview of reconstructed evaluations from which the utilized decision-making procedure may be derived. A determination is made of whether the criteria are weighted or whether the alternatives are tested according to a set of requirements. It is also determined whether or not the decision rule is of a compensatory nature. Compensatory rules allow for unfavorable evaluations of a given alternative to be compensated for by favorable evaluations; in principle, all evaluations

are part of the sub-argumentation. In non-compensatory decision rules, the choice is based on a specific type of evaluation on a specific type of criterion; in that case, only those evaluations are required in the sub-argumentation. However, authors may use more for strategic reasons. Indications may also be derived from strategic choices. If, for example, a component of the argumentation is implicit or not formulated unambiguously, this may be explained as a tactic to cover up how exactly the pros and cons were weighed. Another tactic is to embellish the assessment by falsely suggesting that all interests or all pros and cons were taken into account. From a combination of indicators, a decision rule may be derived that the author may be deemed to be committed to. Subsequently, the definitive argumentation structure is established using the analytic structure.

Finally, the application of the contextualized instrumentation of analysis is demonstrated using the case 'Rijksweg 73-Zuid' (State/Provincial highway 73-South) (Chapter 9). This case concerns the construction of a stretch of road along the bank of the river Maas between the towns of Venlo and Sint Joost. An analysis is conducted on two RODs by two different ministers of Transport, Public Works and Water Management: one minister chose to construct a highway on the east bank of the Maas, the other favored construction on the west bank. Both ministers based their decision, among other things, on the project report/EIS. Using the analytic structure, the standpoints pertaining to a choice, the sub-argumentation pertaining to the pros and cons, and the argumentation pertaining to the decision rule are reconstructed. Both textual indications and indications in the different types of context are utilized. The macro-contextual indication of the legal requirement to weight the environment in the assessment, for example, is crucial to the reconstruction of the decision rule and the sub-argumentation containing the pros and cons. By employing the concept of strategic maneuvering, certain ambiguities may be explained. For example, in the one ROD disadvantages are covered up, while in the other ROD advantages are exaggerated. This insight leads to a better justification of the analysis. The reconstruction of the argumentation shows that each minister assesses the available information in their own way and that they utilize differing decision rules in doing so. The case demonstrates how the precized instrumentation of analysis must be applied in reconstructing argumentation in support of a choice in RODs based on EIA. The analytic structure, the different kinds of indications in the text as well as in the context, combined with the attention to strategic maneuvering, allow for the creation of a systematic and justifiable reconstruction of the argumentation structure in this specific institutionalized context.