

Marketplaces

Movements, Representations and Practices

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Chapter 13

The multi-scalar nature of policy in/mobilities

Regulating 'local' markets in the Netherlands

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Introduction

On an evening in late October 2019, about a hundred market traders from the Dutch province of Overijssel gathered in a conference room to attend a public discussion organised by the national traders association (*Centrale Vereniging voor Ambulante Handel*, CVAH). Only three months earlier, the CVAH had commissioned an independent research agency to investigate the local effects of the 2006 European Union (EU)–law “Services in the International Market Directive” (2006/123/EC; hereinafter referred to as “Services Directive”) on concession contracts that market traders acquire from municipalities to sell their products in publicly owned markets. The public discussion was organised to inform traders about the consequences of two Articles of the Services Directive in particular. Articles 12 and 13 exercise a genuine “public procurement principle” (Usai, 2014) that requires Member States to introduce an equal selection procedure to choose among different candidates when the number of authorisations for an economic activity is restricted due to scarcity of natural resources such as physical space.¹ Moreover, they require that the duration of the concession at issue shall be limited without mechanisms that allow for its automatic renewal (EUR-Lex, 2006). The two Articles closely connect to the neoliberal ideology underlying the Services Directive, which aims to create a uniform legal regime between the Member States for different key sectors (among which public procurements) and desires to “eliminate barriers to the movement of services enabling entrepreneurs to invest in new [M]arkets, wherever located, in the EU State” (De Minico & Viggiano, 2017: 130).

The most salient problem that directly confronts market traders is that they no longer possess the guarantee of obtaining contracts that allow them to trade on markets for an unlimited period of time; a principle that currently prevails in most of the municipal market regulations in the Netherlands. Through intensive advocacy work, members of the executive board of the CVAH have travelled throughout the whole country to convince policy actors at different levels that municipalities should provide all traders with contracts of *at least* 15 years (CVAH, 2019: 41). This highlights the importance of the multi-scalar nature of policy impacts on the nature and production of markets at the local level. It also underscores

the role of different actors in shaping flows of knowledge about policies and in transferring policies themselves from one scale to the other. As McCann (2011: 108) has argued, these are increasingly important aspects of the production of public spaces, yet they have not always been adequately recognised and theorised.

Building on the work of scholars who have argued that rather immobile or geographically bounded aspects of place are inherently related to social-economic, political and institutional relations stemming from elsewhere (e.g. Amin, 2008; Massey, 1991; Sheller & Urry, 2006), we illustrate in this chapter the multi-scalar nature of the institutional framework that influences the production of Dutch markets. While doing so, we move beyond ‘place-based’ approaches to public spaces to argue that the everyday functions of public spaces are affected by institutional relations that extend beyond their physical confines (Van Melik & Spierings, 2020). Methodologically, we make use of a mix of qualitative methods, among which a discourse analysis of relevant policy texts, semi-structured interviews with institutional stakeholders and legal experts, and participant observations of public meetings during which the Market Directive was discussed. In our analysis, we trace how the socio-geographical relations of stakeholders (e.g. traders, CVAH members, municipal actors, national politicians, EU policymakers) evolved as they were drawn together into the Services Directive case. Our fieldwork is executed within the framework of the HERA (Humanities in the European Research Area)-funded research project *Moving Marketplaces: Following the Everyday Production of Inclusive Public Space*, which focuses on the mechanisms behind the production of markets as (inclusive) public spaces.

The multi-scalar nature of marketplace regulation

In the last decade, a developing body of public space research has emerged that centres on the relationship between markets and the state. Especially scholars interested in the impacts of urban regeneration programmes on marginalised city residents have taken up this line of inquiry. With the argument raised by González and Waley (2013: 967) that the “decline of the traditional retail markets in Britain has to be contextualised within the particular trajectory of recent neoliberal urban political economy”, many scholars have responded to this call by showing how markets in a variety of other countries have been converted into gentrified consumption spaces (e.g. Öz & Eder, 2012; Janssens & Sezer, 2013; Guimarães, 2018; González, 2020).

These studies have significantly contributed to our understanding of how contemporary global urban transformations influence the everyday management and regulation of markets, such as stricter rules stipulating market traders to keep the stalls and surroundings tidy or to improve “poor displays”. At the same time, it is important to highlight the fact that the neoliberal ideology underpinning such restructuring projects does not unfold in a unilateral way (Peck & Tickell, 2002; Peck et al., 2009; Van Gent, 2013). By coining the concept of “actually existing neoliberalism”, Brenner and Theodore (2002) have laid an alternative theoretical foundation to study the contextual *embeddedness* of neoliberal restructuring projects, “insofar as they have been produced within national, regional and

local contexts defined by the legacies of inherited institutional frameworks, policy regimes, regulatory practices, and political struggles” (Brenner & Theodore, 2002: 351, original emphasis).

While policies affecting markets are often equated with global forces (González, 2020), the global imposition of neoliberalism is underscored by strong associations with multi-scalar institutional frameworks that impinge upon their pursuit and social outcomes (Van Gent, 2013). As such, whatever the significance of neoliberalism as a global phenomenon, it cannot simply be understood as a sort of “global dust cloud” waiting to settle somewhere in a more or less fixed form (Cochrane & Ward, 2012: 6). Precisely because policies are responses to particular sets of social and political conditions, they can neither simply be replicated nor have the same effects in all places to which they are transplanted. At the same time, supranational policymaking (such as formulated through the EU) cannot deliver universally applicable policy templates (Theodore & Peck, 2012).

In a relatively recent attempt to make the study of these multi-scalar institutional processes empirically applicable, a “policy mobilities conversation” (Temenos & McCann, 2013) has emerged. This research agenda fuses the theoretical approach described earlier with the long-standing study of policy transfer in political science (e.g. Dolowitz & Marsh, 1996; Stone, 1999, 2004) and the recent mobilities approach in social sciences (e.g. Hannam et al., 2006; Sheller & Urry, 2006; Cresswell, 2010). Especially since the mid-2000s, scholars engaging with the policy mobilities conversation have shifted the debate from policy transfer to policy mobilities to reject the former’s tendency to adopt a literal notion of transfer in which policies are assumed to move fully formed. The focus on mobilities, instead, connotes the flows, moorings and partitioning of policies in their movement between different geographical scales.

Furthermore, the policy mobilities conversation provides the opportunity to think about policy mobilities as socially produced, open-ended practices in terms of their movement, applications and mutations (McCann, 2011). As such, it seriously interrogates the ways in which policies shape the production of public spaces *through* power relations between actors who are multi-scalarly located. Such a process-oriented, rather than place-based, approach to the study of public space (Van Melik & Spierings, 2020) seems fruitful to fully capture the ways in which the neoliberal ideology of the Services Directive has interacted with the already-existing institutional arrangements of Dutch markets.

Case study and methods

To explore how the Services Directive has been translated through practices at multiple scales, we follow Roy’s (2012) suggestion to take the “middling technocrats” as object of analysis. Middling technocrats are not simply policymakers or technical experts but actors who are specialised in a specific topic and who are increasingly moving between local, national and international institutions, reshaping these accordingly (Laurie & Bondi, 2005). Representing and advocating for the rights and voices of market traders throughout the Netherlands since 1921, (board) members of the CVAH can be conceived of as such middling

technocrats. The CVAH is not so much a *maker* but a multilateral *mediator* of policy (see Theodore & Peck, 2011) which establishes arenas for policy discussion and compromise among its members. In this work, the CVAH must rely on persuasion as it lacks the immediate power to enforce, or oppose, binding policies or recommendations from other levels. As a “soft power institution”, the CVAH has brought together a plethora of stakeholders and policy agents by purposefully negating the harsh effects of the Services Directive on the profession and everyday practices of traders through its organisational and advocacy strategies. The strategies that operate within and against the policy apparatus of market regulations are often fleeting, sometimes persistent (see Van Eck et al., 2020) and the task of the researcher, as Roy (2012: 37) argues, is to “capture this complex terrain of complicity and resistance”.

The research for this study supports the interpretation and observations of an overarching ethnographic study that aims to enlighten the place-making and mobility dynamics of market traders in the everyday production of public space. For several months between the summers of 2019 and 2020, we conducted ethnographic research by following the everyday lives of market traders in a diverse set of Dutch markets. What is important is that their practices should be framed in relation to institutional arrangements that set and control the parameters of both their settlement in place and the translocal motion between places. We have made use of multiple qualitative research methods to study the rules and regulations affecting the everyday functioning of traders and their markets. The data-gathering cycle started with participant observations of a public discussion organised by the CVAH in October 2019 as described in the introduction. In June 2020, we attended a webinar on the same topic during which the national secretary of the CVAH discussed the developments of the effects of the Services Directive. Through this practice, we have been able to identify the most important actors engaged in the Services Directive case. Accordingly, we have conducted three semi-structured interviews with five board members of the CVAH and one interview with the deputy mayor of Economic Affairs of the municipality of Bunschoten. In order to understand the effects of the Services Directive on already-existing contract systems of two different markets in the Netherlands, we have conducted four interviews with policymakers of the municipal departments of Economic Affairs. All interviews lasted between one and two hours and were audio-recorded and fully transcribed afterwards. Informal talks with market managers on both markets helped to corroborate, or provide nuance to, their statements. Supplementing the interview data, an analysis of relevant policy documents was conducted. The empirical sections below present a number of interview quotations and extracts from these policy documents.

The services directive: multi-scalar (im)mobilities of market regulations

In the Netherlands, almost all markets fall under the authority of municipal governments. They tend to have a multi-tiered structure of control, consisting of both market managers who collect market fees and directly enforce municipal

regulations, and traders in market committees who resolve potential problems and issues which are reported back to the municipal council. All these regulations are included in overarching Market Statutes (*Marktoverordening*). Such Market Statutes outline required behaviour and include the specificities of the selection procedure determining how traders obtain contracts for spots that have opened up on the market terrain. Different forms of selection procedures have been developed such as drawing lots, allocating by means of quality criteria or selecting on the basis of seniority (i.e., order in which traders are placed on market lists). This latter principle of issuing contracts of unlimited duration on the basis of seniority has become deeply entrenched in most of the Market Statutes in the Netherlands (interview CVAH, June 2020).

It is especially these two characteristics of the regulatory landscape of markets that the Services Directive aims to dismantle. Both characteristics—that of seniority and unlimited duration—obstruct the equal opportunity for new tenders to obtain scarce contracts and therefore undermine the underlying neo-liberal ideology of free establishment and investment in markets. The EU can employ several coercive mechanisms, such as treaties, European legislation or quasi-judicial power, to shepherd Member States into desired policy directions. Directives, represent a soft mode of governance, combining both coercive and voluntary properties (Kortelainen & Rytteri, 2017). While members states have to accept directives and are obliged to obey to the policy framework set by the Council of Ministers, they have some room for manoeuvre in deciding how to do this and which regulatory instruments they wish to deploy. Kortelainen and Rytteri (2017) note that both the relatively high level of abstraction of EU directives and the autonomy that Member States have in their interpretation and enactment enable the translatability and mobility of EU directives.

The abstract nature of the 2006 Services Directive, however, initially allowed for the direct opposite: a process of slow local implementation which took almost ten years and defined, as such, its first instance of sheer *immobility*—something which Carr (2014) has labelled as “policy paralysis”. In October 2015, as a decisive moment of policy change, or “policy window” (see Kingdon, 2003), the Dutch Council of State (*Raad van State*, RvS) eventually ruled that municipal contract systems, in general, have to abide to Article 12 and 13 of the Services Directive. The court decision that acknowledged the overriding force of the Articles of the Services Directive materialised when a local service provider offering boat trips through Amsterdam’s canal ring appealed the municipality for issuing boat contracts of unlimited duration after a municipal decision had earlier denied such authorisation for him (see EUR-Lex, 2015). Against the refusal, the provider pleaded the decision to the Council of State, maintaining that the policy pursued by the municipality is in conflict with the provisions on the freedom of establishment as contained in the Services Directive (Faustinelli, 2017). Asking about the possible reasons behind this relatively long period of policy immobility, a policymaker of Economic Affairs of the municipality of Amsterdam responded,

The Services Directive hadn’t been implemented in many localities during that time, especially because municipalities were hesitant to deprive traders

from their acquired rights [i.e., seniority principle]. And it was only from [approximately] 2016 onwards that [national] jurisprudence has been developed with regard to the application of the Services Directive principles. This jurisprudence of the Council of State has rendered the abstract principles of the Services Directive more concrete.

(Interview August 2020)

In April 2017, RvS confirmed again the required implementation of the Service Directive at the local level. This time, the court case directly applied to the market trade sector. A vendor selling flowers in Doorn appealed the decision of the municipality that had issued a contract of unlimited duration to another flower vendor (see RvS, 2017). Both court cases can be conceptualised as “mobilisation practices”, as we would call them, which together have further shaped and crystallised legalisation at the local level. As a result, the board members and lawyer of the CVAH started to recognise that similar court cases in the future can put the existing contract systems at risk (interview CVAH, June 2020). Responding to this situation, the CVAH consulted a professor in administrative law at Leiden University who advised the CVAH to draft a report on the negative consequences of the Services Directive for traders and to propose on the basis of those arguments a suitable duration of contracts within the legal boundaries of the EU directive.

Accordingly, in November 2018, after a two-year period of “intensive advocacy” and sustained contact with the House of Representatives (CVAH, 2018), two parliamentarians, Stoffer and Wörsdörfer, filed a motion requesting the national government to “consult with the *Vereniging van Nederlandse Gemeenten* [VNG, Association of Netherlands Municipalities] in the short term” to decide upon an approach to alleviate the prevailing uncertainty among traders in the face of short-term contracts and to “ensure the survival of the ambulant trade sector” (Tweede Kamer, 2018). In order to prevent municipalities throughout the country from dissolving existing contracts with traders in the period between the adoption of the motion and the ministerial response (which had to await the research results of the CVAH report), “immobilisation strategies” were deployed to delay the immediate local implementation of the Services Directive. After consultations with the CVAH, the alderman for Economic Affairs of the municipality of Bunschoten (a municipality which might be said to constitute the “core” of the Dutch ambulant trade sector due to its history of fishery) decided to write a letter to all 354 deputy mayors of Economic Affairs throughout the country, requesting them to “not make changes in the Market Statutes until the outcomes of the national discussion” (Municipality of Bunschoten, 2019). The deputy mayor explained the underlying argumentation for this immobilisation strategy as follows:

The main problem for us is not so much our own market ... but that our entrepreneurs work on different markets across the whole country. As such, we have a completely different view on the importance of this sector than other municipalities where the ambulant trade, for example, only covers two

percent of the economy. Especially such municipalities are more likely to think: “Hey, there has been a court judgement by the Council of State, we have to do something. We want to put our house in order, so we are going to adjust our Market Statutes to fall in line with legislation.” What then happens is that one municipality will decide upon contracts of four years, another on two years and again another on ten years. This confronts market traders with big uncertainty; first because of the different contract regimes in different municipalities, and secondly because these contracts are too short to recoup large investment costs. If traders pull investments out of their markets, they will eventually die out. ... We decided that it would be strategic to write a letter and bring municipalities, policy makers, aldermen and councillors to the attention of this problem and to first await the research results of the CVAH.
(Interview September 2020)

Underscoring the importance of a consistent and homogeneous contract system for all traders among different municipalities, the deputy mayor further explained that the Services Directive, “with an abstract framework pursuing free market access”, has the opposite effect of creating a nationally scattered institutional landscape that—according to the deputy mayor and the CVAH—constrains traders’ possibilities to safely invest and settle in different municipal markets. The Services Directive takes, using the alderman’s verbiage, a “one-size-fits-all-form” that “goes against local and national trade practices that have been going on for generations”. He concluded, “The complexity of the functioning of markets is much bigger than pursuing more market accessibility. I’m sure everyone wants that [sic], but its implementation has inadvertent effects”.

In the long-awaited ministerial response to the national motion of 2018, Mona Keijzer, former state secretary for Economic Affairs and Climate Policy, eventually decided to not incorporate the advice of the CVAH report (2019) that encourages municipalities to universally issue contracts of a minimal 15 years to all traders. Rather, Keijzer writes in her letter to the Parliament that the “stimulation and exchange of best practices among municipalities and trade unions [i.e., CVAH] can help to learn from each other” in deciding upon the “fulfilment of contract systems and the substantiation of the duration of contracts” (Tweede Kamer, 2019: 5). Obscuring the details of how such “best practices” should look like be put in place (see Bulkeley, 2006), the Ministry of Economic Affairs has opted to leave it to the municipalities how to concretely implement the Services Directive at the local level.

Recently, however, the CVAH has been notified that the Ministry of Economic Affairs and Climate Policy has consulted a new research agency to look into new possibilities to set different, fixed durations of contracts for different branches within the ambulant trade sector, while dismissing the CVAH report as a “lobby report” (interview CVAH, June 2020). The national secretary of the CVAH lamented,

This has really upset us. ... And to be honest, I’m worried. How can we, as national traders, association, justify that we agree with different contract

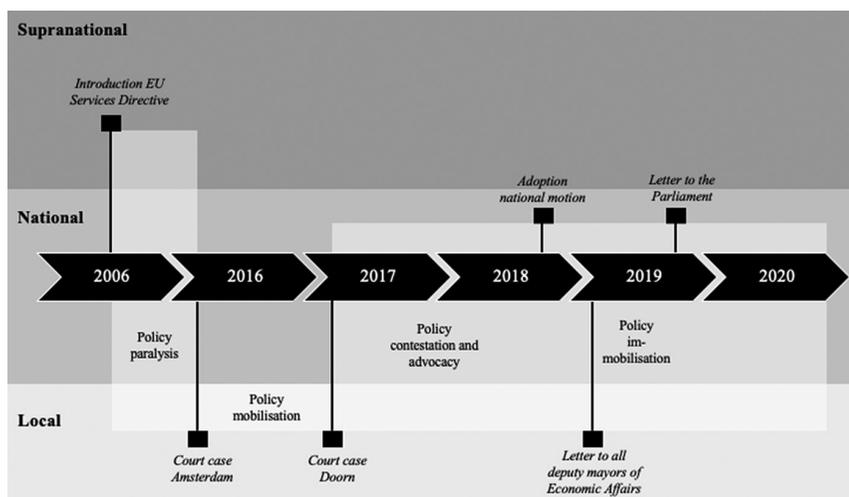


Figure 13.1 The mobilisation process of the Services Directive.

Source: authors.

durations for different branches? That is a delicate issue. I want to know how we can have a say in this and make clear that we oppose this development. We really oppose this. Because it's dangerous. Anyway, this is what is happening right now.

(Interview June 2020)

In sum, Figure 13.1 shows the timeline of the mobilisation process of the Services Directive, following a multi-scalar route that is structured around different moments and practices of im/mobility. Both Figure 13.1 and our empirical evidence make clear that multi-scalarly emplaced practices and moments of mobility-immobility do not simply represent an asymmetrical dichotomy, but rather exist in a dialectical relationship in the making and remaking of policies (Jacobs, 2011; Oancă, 2015).

Conclusion

The aim of this chapter has been to investigate the governance of markets “in action” (McCann, 2013) and to understand it as a dynamic assembly of practices that, albeit ‘locally’ situated, also resonates ‘extra-locally’ in complex and contested ways. Moving beyond the general tendency in studies on markets to explain the rules and regulations managing markets as mere derivatives of neo-liberal global forces, we have shown that local policy domains are not passive in the face of these forces or logics. Rather, municipal Market Statutes regulating the management of marketplaces are actively made and re-made through the power relations between actors who are multi-scalarly located.

As such, by taking the neoliberal EU Services Directive as our empirical starting point, we have been able to show that policy mobilisation and implementation do not occur through one-to-one replication but through a “complex sociospatial process of emulation and transmutation that has uneven consequences for cities and citizens” (McCann, 2013: 20). These uneven consequences beg further research attention. As a “double-edged sword”, as the deputy mayor in Bunschoten called it, the Services Directive might, on the one hand, provide more opportunities for starting traders to enter markets, as they no longer face waiting lists for market spots that are now occupied for an unlimited time period by incumbent traders. On the other hand, it might also create a scattered institutional landscape of different local contract systems, as municipalities can decide for themselves upon the duration of contracts which have to be limited. Our analysis has shown that the middling technocrats fear that the latter situation will make it more difficult for all traders to obtain bank credits for their ambulant businesses and that it obstructs, as such, their movement between, and settlement in, different markets. It is therefore imperative to approach this issue as an empirical question, opening up research venues to further unravel the effects of multi-scalar institutions on the everyday functioning of public spaces.

Note

- 1 In principle, the Services Directive inhibits Member States from subjecting economic services to an authorisation scheme (such as a concession contract system) *in toto*, unless contracts are scarce; a situation that applies to contracts for (physically limited) market spots. In the latter case, municipalities are only allowed to issue contracts of a limited time period and the contract system has to satisfy three cumulative conditions: non-discrimination, necessity and proportionality (EUR-Lex, 2006).

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