Thank you mr. rector.

Dear Candidate,

As a legal academic, socio-empirical research is not my typical avenue of research, but of that type, yours is the kind that I appreciate most as it can teach us about effectiveness of legal phenomena, such as EU and member state legislation, administrative decisions and court-cases.

And surely the issue of EU Natura implementation is one of the more recent wicked problems in environmental policy making, both from a societal and a scientific perspective. So, your fine study is much appreciated.

I feel I need to excuse myself for scaring you, the other day, by suggesting the possibility of, given the image on the front jacket of your dissertation, wanting to start an ornithological discussion with you today.

Rest assure, I hope, instead my question concerns a legal issue; one of legal design of regulation. My question is triggered by your reference to the notion of ‘constructive ambiguity’ of many European directives, certainly when they address wicked policy problems.

Following Senden, you describe this as a situation ‘where the right choice of words, that can be interpreted in various ways, contributes to the political consensus about a piece of legislation.’

Vagueness of definitions (e.g. significant impacts), long preambles, clashing and complicated provisions are amongst the typical features. A bad job, you might say, in terms of legislative technique, but perhaps still a fine one in getting things done. Instead of ‘sloppy work’, perhaps we should speak of a rather successful trade-off between legal certainty and political effectiveness. One that is also in keeping with the general requirement for EU directives, to not only ensure uniformity within the EU, but also allow flexibility for member states at achieving a proper national legislative fit.

But it seems as if your appreciation reaches even further, especially against the complex and dynamic challenges of adaptive water resource management. As you state, in your conclusion that, rather than adjusting legislation to Building with Nature principles, we should pro-actively work with legislation, a more positive take on the design of relevant directives seems to prevail. This is marked, also earlier in your book, by references to terms such as ‘smart
implementation’ and regarding EU regulation and the flexibility which it allows, rather as an opportunity rather than as barrier and utilizing the possibilities of achieving goals from the directive in the most efficient and successful way.

I still struggle in determining your opinion about this type of legislation. Can you please elaborate some more on whether you take the viewpoint of the style of legislation in EU directives as a happy accident, or if we should indeed regard this style as a conscious design that is indeed very suitable to the demands of Adaptive water resources management? Albeit that the fruits come, perhaps, with some more delay.

Could you also reflect on what, from a legal perspective, would be regarded as possible (major or minor) drawbacks of this kind of, what I call, ‘Managerial Legislation’, such as the weakening of legal certainty, the de facto delegation of power to experts (technocratic legitimacy), a strong dependency on willingness of private stakeholders to collaborate and the increased importance of case-law in setting legal markers for interpretation and deciding on permissions to go ahead with projects – a trend which I think will continue to be of great importance.

I know that your focus is on implementation, but lessons about implementation can also be relevant to legislation as somewhere the twain should meet. Perhaps by now you would prefer an ornithological question, but could you please give your view on these matters?

**Back-up question (Not used)**

It has been suggested that legislation of the kind as EU Habitat regulation, is an upbeat to more and more legal flexibility. Recently, along the line of design, in the Netherland the notion of flexibility has given rise to the idea legislative programming, where, in short, one is allowed to go ahead with a project, even while infringing on strict environmental standards, if and when there are sufficient safeguards that the infringement will in time be adequately compensated. This was applied first in the clean air legislation, as a response to economic lock-up fears following fine particles legislation and is expected to also become part of the future Environmental Act. Meanwhile fears are that the scope for compensation moves beyond the boundaries of the ‘Speciality principle’, such as trade-offs between environmental and social safety concerns. A similar issue on the realm of compensation is relevant in the Natura 200 implementation. What is your take on the fears that some feel in the wake of this move?