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**Our ref.**  
DGA-PAV / 20044542

**Your ref.**

**Encl.**

Date **14 FEB. 2020 -**

Re Progress of the sixth Nitrates Directive action program and reinforced  
manure enforcement strategy for derogation from the Nitrates  
Directive

Dear Mr. Calleja Crespo, *Dear Daniel,*

Over the past few months, various discussions have been held between you and my employees about the implementation of the sixth Nitrates Directive action program and the enhanced manure enforcement strategy, in the light of the requirements of the Nitrates Directive derogation decision for the years 2018 and 2019 (Decree 2018/820/EC). I appreciate the constructive way in which these conversations went. On February 4<sup>th</sup>, 2020 I sent you a request for an extension of the derogation decision for the years 2020 and 2021. A discussion about this took place on 6 February. To finalize those discussions and to support decision-making on derogation for the years 2020 and 2021, I inform you about the Dutch government's commitment on improvement of the water quality and compliance with manure regulations.

In our telephone conversation of February 4<sup>th</sup>, 2020 you mentioned three points that I will discuss in more detail in this letter. First, you asked what the purpose of the reinforced enforcement strategy is and when the improvement of enforcement becomes visible. I answer this question in the section "Purpose of the reinforced manure enforcement strategy" (page 2). Secondly, you indicated that there would be a delay in the implementation of the enforcement strategy. I will discuss this in the section "Measures and milestones" (page 3). Finally, you asked to make clear the inspection figures per sector. In the section "Surveillance intensity" (page 4) I give a response to this point.

#### **Progress implementation sixth Nitrates Directive action program**

On December 22, 2017, I sent you the sixth Nitrate Directive action program. The action program includes a package of measures, which will be implemented during the period 2018-2021, with the aim of improving water quality in accordance with the requirements of the Nitrate Directive. There has been contact consultation with your service prior to the adoption of the action program. After approval of your service, the action program was presented on February, 2<sup>nd</sup> 2018 in the Nitrate Committee. The action program subsequently formed the basis for granting derogation from the Nitrate Directive for the years 2018 and 2019.

Implementation of the measures from the sixth action program is entirely on schedule. All announced measures have been introduced on the planned dates and preparations are currently being made for the implementation of the remaining measures as of January 1<sup>st</sup>, 2021 and January 1<sup>st</sup>, 2022. In particular, I would like to point out the amendment to the Fertilizers Act as of January 1<sup>st</sup>, 2020 in which the national as well as the sectoral manure production ceilings (expressed in phosphate and nitrogen) are laid down in national legislation, including a set of instruments to enforce them (Official Journal, no. 520). With this, the Netherlands has also given substance to the requirements of recital 14 and article 4.1 of the derogation decision 2018-2019. The Central Bureau of Statistics published the provisional figures for nitrogen and phosphate production in 2019 on January, 30<sup>th</sup> 2020. These figures show that production, both nationally and for the various sectors, is below the respective production ceilings (see appendix). The Netherlands thus meets the conditions as stated in recital 14 and article 4.1 of the derogation decision 2018-2019.

### **Progress implementation of the Enhanced Manure Enforcement Strategy**

In addition to the implementation of the measures from the sixth Nitrates Directive action program, your service has drawn attention to improving compliance with manure regulations in the Netherlands. To this end, the Netherlands has drawn up the reinforced manure enforcement strategy, which I sent to you on September 28<sup>th</sup>, 2018. With this strategy, the Netherlands has fulfilled the requirements of recital 16 and article 4.2 of the derogation decision 2018-2019. After approval of your service, the reinforced enforcement strategy manure was presented to the Nitrate Committee on December 18<sup>th</sup>, 2018. On June 24<sup>th</sup>, 2019, the Netherlands presented the progress and initial results of the implementation of the strategy in the Nitrate Committee.

During the meetings with your service, much attention is paid to the expeditiously implementation and results of the reinforced manure enforcement strategy. Rightly so, this is also a priority for the Netherlands. In the light of the conversations I want to highlight and clarify a number of things.

#### *Purpose of the reinforced manure enforcement strategy*

The reinforced manure enforcement strategy is aimed at tackling and eliminating violations in the use, transport and processing of manure. An important element in the strategy is the more risk-oriented use of supervision and enforcement on the links in the manure chain and the areas in the country where the risk of non-compliance is the highest. The areas De Peel, Gelderse Vallei and Twente have been selected for this. It has been shared with your service that it is to be expected at the start of the implementation of the strategy that the more risk-oriented deployment of enforcement capacity will lead to an increase in the number of irregularities found. This is also apparent from the progress report I sent you on November 11<sup>th</sup>, 2019, as well as from the answers to questions sent to your employees on December 18<sup>th</sup>, 2019. The enforcement strategy aims to improve compliance with manure regulations by, amongst other things, increasing the chance of being caught. We are on the right track as outlined by the aforementioned progress report and answers. Just like the sixth Nitrates Directive action program, the reinforced manure enforcement strategy contains a package of measures that will be implemented during the 2018-2021 period. This should

lead to a substantial improvement in compliance at the end of 2021 / beginning of 2022.

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### **Actions and milestones**

The increase of the cooperation between the different supervisory bodies and smarter use of modern technology are the core elements of the enhanced enforcement strategy manure. The capacity released as a result of the reduction in the percentage of physical checks on derogation farms has been redirected at risk-oriented enforcement within the framework of the enhanced enforcement strategy. In addition, for the implementation of the enforcement strategy in the period 2018-2021 an additional € 40 million has been invested in RVO.nl and NVWA, the services responsible for the enforcement and supervision of the manure policy. These resources are dedicated at the expansion of the capacity and to set up modern IT systems for accountability and enforcement.

#### *Milestones for the implementation of the reinforced manure enforcement strategy:*

- Area-oriented enforcement: The area-oriented enforcement is directed at the three areas where the risks are the highest, as was consulted with your service. This approach was thereafter also set up in the other two areas. In 2019, joint inspections were carried out in the De Peel and Gelderse Vallei areas by national and regional supervisory- and enforcement authorities; these joint inspections will start in the Twente area in 2020. On September, 26<sup>th</sup> 2019 a joint enforcement plan with regional environmental agencies and Dutch water boards was established for the De Peel area. On November, 22<sup>nd</sup> 2019 a joint enforcement plan for 2020 with regional environmental agencies and Dutch water boards was established for the Gelderse Vallei and Twente areas. In addition, cooperation agreements for De Peel were signed on February 10<sup>th</sup>, 2020, making data exchange between national (RVO.nl and NVWA) and regional supervisory bodies (regional environmental agencies) easier. In the third quarter of 2020, similar cooperation agreements will be concluded between the supervisory bodies in the Gelderse Vallei and Twente regions.
- Automation: In 2020 the new system of "real-time" digital accountability for manure transports will be introduced, to replace the current method of accountability on paper afterwards. The implementation of this system includes changes to the IT systems at NVWA and RVO.nl and the amending of regulations. In the short term, the proposal for amending the regulations (Uitvoeringsregeling Meststoffenwet en Uitvoeringsbesluit Meststoffenwet) will be publicly consulted. Thereafter, among other things, the amendment of the regulation will be notified at the European Commission. The intended entry into force is in the end 2020.
- Sanction policy: In accordance with Article 4.2.d of the derogation decision, an assessment has been made as to whether the current fines for violations of the manure regulations are sufficiently deterrent. This is the case, the fines for pig and cattle manure are on average a factor of 2 to 4 higher than the economic gain of violations, and for poultry manure it is a factor of 20 to 40 higher. To make the sanctions policy even more effective, the Dutch government has announced that it will explore whether manure fines can be differentiated according to the size of the company and recidivism. Decision-making on this matter will take place in the spring of 2020.

### *Enforcement intensity*

The enhanced enforcement strategy serves, among other things, the improvement of targeting risk-oriented violations of manure regulations and to increase the chance of being caught. That is why enforcement intensity on high-risk links in the chain, namely intermediaries and pig farms, will increase. The following objectives have been formulated for increasing the intensity of enforcement:

- An increase in the enforcement intensity in the entire manure area (number of farms inspected compared to the total number of farms) from 4.9% in 2018 to 5.7% in 2020;
- Increase of the enforcement intensity on pig farms (percentage of farms individually inspected) from 3.4% in 2018 to 5.5% in 2020;
- Maintaining the monitoring intensity of intermediaries at the current level of 47%. As the intensity of supervision in this sector is already high, the focus is on frequent inspections of repeat offenders.

Your service has asked about the physical inspections by the NVWA per sector. Yet this has not been specifically administered in the records of the NVWA, therefore I cannot answer this question for recent years. The NVWA will look into changing the administration systems in order to be able to report for each individual sector of targeted category of companies. Apart from that, the risk analysis and selection of companies for administrative and physical inspections do take the type of company (pig farm, mixed farm, etc.) into account, as has been explained to your services.

### *Progress monitoring*

Improving compliance with manure regulation via the measures from the reinforced manure enforcement strategy is and remains a priority of the Dutch government. In accordance with Article 11 of the derogation decision, the Netherlands annually reports in June on, among other things, the progress of the implementation of the reinforced manure enforcement strategy. If necessary adjustment can be made during the implementation. Should the measures prove to be insufficient at the start of 2022, additional measures will be taken to improve compliance.

### **Environmental effects of derogation from the Nitrate Directive**

In consultation with the European Commission, measures from the successive action programs have been implemented in Dutch manure policy and legislation, which implements the obligations from the Nitrate Directive. In accordance with the provisions of the Nitrates Directive, since 2003 an independent scientific basis forms the basis for derogating from the Nitrates Directive to the Netherlands. Due to the conditions set for participation in derogation, including the higher percentage of grassland leading to less nitrate leaching (also with higher animal manure donations), the water quality is better among derogation farms than among farms that do not participate in derogation. In addition, derogation is an important part of the management of many farmers.

I share the view of your service that environmental measures should be viewed from a broad perspective, with a targeted approach to the various environmental

problems. In this context, your service rightly referred to the nitrogen deposition in Natura 2000 areas in the Netherlands in the recent meeting on 6 February, 2020. The Dutch government sent a letter to the House of Representatives last Friday about tackling nitrogen deposition in these areas announcing the rollout of a package of measures. You will find this letter attached.

One of the aforementioned Dutch measures is the subsidy scheme for the restructuring of pig farming. This is aimed at reducing odor nuisance, but also ensures a reduction of nitrogen (ammonia). In addition, this scheme contributes to the climate statement. The opening of this subsidy scheme was closed on January 15<sup>th</sup>, 2020. 502 pig farmers have registered with business locations. The process has been started to see which applicants meet the requirements, at the same time the odor score is calculated and then the potential participants are ranked on odor score and participants receive, in principle 13 weeks after the closing date, a subsidy decision. This subsidy is offset by the fact that the participants must definitively and irrevocably end their business location and surrender their pig rights, which will then be canceled. This means a permanent shrinking of the pig herd and thus reduces pressure on the manure market. The Netherlands wants to honor all applications received from participants who meet the requirements.

Also derogation from the Nitrate Directive has effects on the environment. I have asked the Committee of Experts on the Fertilizers Act (Commissie Deskundigen Meststoffenwet; CDM) to provide an explanation of the environmental effects of derogation, in particular with regard to water quality and nitrogen deposition in Natura 2000 areas (see annex). As indicated above, the derogation offers an important incentive to prefer grassland over arable land, which is favorable for water quality. If the derogation were not extended, part of the grassland would be converted into arable land, in particular for the cultivation of maize. This has a negative effect on nitrate leaching and thus on water quality. Converting grassland to arable land would also have a negative impact on the climate (reduced coal storage in the soil) and on biodiversity in agro-ecosystems. Furthermore, not extending the derogation would lead to an increase in the use of artificial fertilizer, which is detrimental to the climate and to the development of circular agriculture, with which the Netherlands is striving to close the cycle with as few external inputs as possible, such as artificial fertilizer. On the other hand, derogation also has disadvantages. Derogation makes higher fertilizer rates of animal manure possible, with which ammonia emission is associated. This can lead to nitrogen deposition in Natura 2000 areas. I would also like to point out that in the aforementioned letter to the House of Representatives, the Dutch government announced that measures will be taken to reduce ammonia emissions when manure is used, for example by diluting the manure with water. This would then apply to all companies, including companies that use derogation. My conclusion is therefore that not extending the derogation from the Nitrate Directive would be harmful to the environment.

**Finally**

In this letter I have outlined the commitment of the Netherlands in accordance with the requirements of the derogation decision 2018-2019. With this letter I also addressed the remaining questions and comments from your employees, which were raised in the meeting of 6 February 2020. All this takes place in the broader context of a fundamental change in the Dutch agricultural sector to a system of circular agriculture, which the Dutch government Cabinet has initiated. Derogation of the Nitrate Directive is an important element in this, which also benefits the environment.

I therefore hope that the request for an extension of the derogation from the Nitrates Directive for the years 2020 and 2021 will be handled expeditiously. Naturally, I am willing to explain this letter further where necessary.

Yours sincerely,



Marjolijn Sonnema  
Director-General for Agri