

**Position on the Derogation of the Nitrates Directive, The Netherlands
on the level of officials**

Introduction

In the last months we have been in constructive dialogue with DG Environment of the European Commission on the content and conditions of a derogation on the Nitrates Directive to the Netherlands for the period 2022-2025. For the purpose of the meeting of the European Commissioner for Environment Mr. Sinkevicius and the Minister of Agriculture, Nature and Food Quality of the Netherlands, Mr. Staghouwer on July 6th, 2022 we herewith share in writing our position.

Considerations

- The request for a derogation should be considered in the wider context of the inevitable and irreversible transition of the Dutch agricultural sector towards a sustainable sector meeting its national, EU and international objectives for nature/nitrogen, water quality and climate, as enshrined in the National Program for Rural Areas. The objectives of which were confirmed by the Dutch Parliament on June 28th, 2022.
- By law, the binding target of bringing 74% of all areas under the critical deposition load will be brought forward from 2035 to 2030 whereby the emissions of nitrogen to the air will be reduced by approximately 50%.
- Our Government has chosen for a broad, integrated area approach to restore nature, nitrogen, climate and water in the Netherlands in accordance with the European objectives and obligations. Under the approach, it will be made clear per area which measures are required to meet these objectives.
- This will be done by the National Program for the Rural Areas in which our Government lays down the structuring, guiding choices and (regional) goals, to making it inevitable that the goals for nature, nitrogen, water and climate are achieved.
- By 1 July 2023 at the latest the Provinces must elaborate in area plans the measures at area level. The Government will approve the area plans mid-2023.
- Inevitability includes a clear escalation mechanism, which does not exclude the use of more coercive instruments. The Environment and Planning Act offers a range of instruments to guarantee inevitability even in the event of non-compliance and these will be used accordingly if necessary.
- The Government has allocated approximately € 25 billion for this transition for the period to 2035. These resources are recorded in a statutory Transition Fund for rural areas and nature.
- The transition towards a sustainable agriculture will be done a.o. by extensification, conversion, innovation and relocation. A reduction in the number of animals is no objective as such, but a major and inevitable consequence of meeting the objectives.
- It is therefore inevitable that by this approach the European obligations for nature, nitrogen, climate and water will be met in time.

- The Netherlands and the European Commission have agreed that the new derogation will entail a 'transition derogation', meaning the (conditions of the) derogation must facilitate and support the transition of the Dutch agricultural sector.
- We appreciate the constructive dialogue with the services of the Commission that has taken place over the past months. We worry that the draft decision that is under discussion includes some conditions that are not conducive to supporting the transition. This will harm the timely achievement of our environmental targets as well as erode the public and political support for the up-take and implementation of the National Program for Rural Areas. This will have far reaching consequences for the green ambitions of the Netherlands beyond the agriculture sector, including the energy transition. This would be in the interest neither of the Netherlands nor of the Commission's EU Green Deal ambitions.

Shared outcome

- We share that we both want to reach the environmental goals in time.
- We have different views on the pathway and time schedule of measures. We are willing to bridge these differences.

Our position on the proposed content of the derogation decision to the Netherlands

We acknowledge the finite nature of a transition derogation. For the sector being able to adapt to the new reality by phasing out of the derogation and phasing in the National Program on Rural Areas it is key that:

- The derogation contains a temporized, step-by-step path of reduction in the level of the application standard for nitrogen from livestock manure of 10 kg/nitrogen/hectare per year;
- The distinction in the soil types for the 250- and 230-areas remains the same as in previous decisions since there is no legal basis for designating the reduction of eutrophication by designating polluted areas for surface water.

We can further agree upon:

- An adjustment of the national manure ceilings for nitrogen and phosphate from the level of 2002 to 2020 and a 10%-reduction of the national manure ceilings in 2025;
- A gradual 10%-reduction of the overall nitrogen fertilisation rate (both manure and chemical fertilizer) in 2025;
- No derogation in Natura 2000 areas as of 2023.
- Progressively extension of the enhanced enforcement strategy to regions where the risk-assessment shows that the risks have significantly increased, by the end of 2025, taking into account the experience and best practices gained.

We are currently studying the proposal of DG AGRI on the interpretation of general buffer strips within the new Common Agricultural Policy (GAEC 4) in which proportionally is taken into account and we expect the conclusion on this is the solution here.

A derogation which is aligned with the philosophy of the National Program for Rural Areas (area specific and focused measures) and with the transition path and schedule of the area processes is supportive to the whole approach. The conditions to a derogation decision as listed above will already have a major impact. Of the following conditions we think they are not effective or not feasible, and therefore urge the Commission strongly to reconsider them:

- No derogation in groundwater protection areas. We expect that no derogation leads to a decrease in grassland and has a negative effect on ground water quality. This is counterproductive to the targets we have to meet. In our view a package of legal measures targeting arable land (such as implementing restrictions on cultivation) is more effective. If we can agree upon this we aim at implementation of as of January 1st, 2024.
- No derogation nearby Natura 2000 areas because of the lack of a legal designation of these areas.
- A doubling of the mandatory physical inspections (to 10%) on derogated farms. We believe it is more effective for water quality to do risk-based controls on derogated farms, but also on other farms.

We acknowledge the position of the Commission that the discussion on a country-specific solution for processed manure (RENURE) as a replacement for chemical fertilizers (while not exceeding the total maximum application standard for nitrogen) should be separated from and follow the conclusion of the discussions on the current derogation. However, we would like to continue these conversations with you in a later stage.