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Date

Subject Progress report on the Enhanced Manure Enforcement Strategy and
update on water quality on derogation farms

Dear Madam President,

On 24 September, I informed the House of Representatives of the progress of talks with the European Commission on extending the derogation (Parliamentary Paper 33 037, No. 363). To assist the European Commission's decision-making on the derogation, reports have been compiled on the progress on implementing the Enhanced Manure Enforcement Strategy and on the latest developments in water quality on derogation farms. This letter is to inform the House of Representatives of these reports, which I am sharing with the European Commission at the same time.

Our reference

DGA-PAV / 19257363

Your reference

Appendices

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2019 Progress report on the Enhanced Manure Enforcement Strategy

The Enhanced Manure Enforcement Strategy was adopted and sent to the House of Representatives in September 2018 (Parliamentary Paper 33 037, No. 311). In anticipation of the adoption of this strategy, area-specific enforcement had already commenced in the De Peel region (East Brabant and North Limburg) in 2018. In June 2019, I informed the House of Representatives of the results achieved in 2018 in the 2018 progress report on the enforcement and implementation of manure policy (Parliamentary Paper 33 037, No. 358). The enclosed progress report is to inform the House of Representatives and the European Commission of the progress in implementing the Enhanced Manure Enforcement Strategy in the first half of 2019 (see Appendix 1).

Naturally, the results for the first half of 2019 build on those of 2018. The progress report reveals that we are well on track with implementing the Enhanced Manure Enforcement Strategy. The additional use of capacity at the Netherlands Enterprise Agency and the Netherlands Food and Consumer Product Safety Authority (NVWA) has resulted in an increase in the number of inspections in the three at-risk areas, without this being to the detriment of activities in the rest of the Netherlands. The risk-oriented approach for intermediary businesses appears to be effective. Here, the Netherlands Enterprise Agency is mainly focusing on smaller investigations with a short duration and opportunities for enforcement against repeat offenders. The figures reveal that the risk-oriented approach has allowed the Netherlands Enterprise Agency to act more effectively: as a result of targeted checks at at-risk businesses, more violations were detected and fines imposed than in previous years. In addition to its normal supervision activities,

the NVWA now also undertakes larger and more complex investigations (preferably in cooperation with other bodies such as environmental services, the Police and the Fiscal Information and Investigation Service (FIOD) and coordinated by the Public Prosecution Service), including at intermediary businesses and their client base. Aside from administrative fines, this approach has resulted in cases where the courts have imposed custodial sentences of four and two years on operators of intermediary businesses. Such sentences are a powerful signal that fraud involving manure is unacceptable. Several major cases are currently ongoing. I am unable to release any further information in the interest of those investigations.

However, the progress report for the first half of 2019 also reveals that there are practical problems and obstacles that remain to be overcome. The additional capacity that has been made available has not immediately delivered the desired effects everywhere. While the area-specific enforcement was being set up, it turned out that the process of learning to work effectively with regional partners took more time and energy than was originally anticipated. Moreover, much time and energy has been invested in elaborating measures to make better use of modern risk analysis technology during inspections and to introduce real-time accounting for manure transports. The investments in both projects should result in an increased likelihood of being caught and increased compliance. However, the downside of this is that the NVWA had less deployable capacity for physical checks in the first half of 2019. The challenge, then, is to strike a sound balance between the additional inspections in the field required in the short term and the deployment of additional capacity for cooperation, so that enforcement can be smarter and more effective in the coming years.

In addition, the judgement of the Trade and Industry Appeals Tribunal (CBb) (ECLI:NLCBB:2018:187) on the levels of precision that are applied in establishing violations and calculating fines was a setback which had an effect on the results of the risk-oriented approach by the Netherlands Enterprise Agency and the NVWA. I informed the House of Representatives of this judgement on 24 October (Parliamentary Paper 33 037, No. 365). As a result of the judgement, the Netherlands Enterprise Agency had to revoke partly or fully 138 fines that were appealed in 2019. It also led to delays to checks in pig farming in particular, because fines could not be imposed for possible violations until the levels of precision had been clarified. In the meantime, the Netherlands Enterprise Agency has published a document on its website to explain clearly to all parties how fines for manure violations are determined. This has satisfied the requirements of the judgement and supervision and enforcement can now continue in full. Meanwhile, I am working on simplifying and refining the fines policy. I refer you to my letter of 24 October for further details on this matter as well.

We are therefore well on track, but it is essential to remain focussed on the diligent implementation of the enforcement strategy. I will continue to prioritise this fully and invest in it. In addition to the NVWA's current efforts and capacity, it is currently recruiting 20 FTE inspectors to work in the manure domain. This reinforcement of the NVWA's capacity should contribute to building on the results that have already been achieved in 2020 and beyond. I will also continue to invest in the diligent implementation and expansion of area-specific enforcement in the

three at-risk areas. In an administrative consultation with administrators from Brabant and Limburg, we recently agreed that 20 joint checks would be conducted in the De Peel area before the end of this year. Discussions with the aim of getting up to speed are also planned with the administrators of the other two areas.

Update on water quality on derogation farms, autumn 2018 and winter 2018–2019

The manure policy focuses on improving water quality. To aid decision-making on derogation, the European Commission has also asked for the most up-to-date impression possible of the water quality. To this end, the report entitled 'Update on trends in nitrate concentrations at derogation farms in the Netherlands' has been compiled (see Appendix 2). The data in this report are taken from the National Monitoring Network on the Effects of the Manure Policy (LMM). These are emphatically *provisional* results; although the data have been subjected to an initial check, they have not been fully validated and reviewed yet. By consequence, the report gives an indicative impression only. The definitive results will be presented in the National Institute for Public Health and the Environment (RIVM)'s annual derogation report, which will be published halfway through next year.

Since monitoring started in 2007, the nitrate concentrations in water being leached from the rooting zone have decreased. The average nitrate concentrations on derogation farms are below the 50 mg/l nitrate limit in the clay, peat and sand region 250. Since 2014, the average nitrate concentrations have also fallen below this limit in the loess and sand region 230. However, the Derogation Monitoring Network results for 2018 and winter 2018–2019 show an increase in the nitrate concentrations comparable with the results in the RIVM's Basic Monitoring Network (which covers all types of businesses). This can be seen in the loess region in particular and to a lesser extent in the sand region 230. There was a local drought in these regions in 2017. In the summer of 2018, the drought affected the whole of the Netherlands. This drought was more severe than any previously experienced in the country. This is reflected in the increase in nitrate concentrations in the clay and peat regions in winter 2018–2019.

A drought affects the nitrate concentrations in the groundwater in several different ways:

- 1) As groundwater levels decrease, the soil becomes richer in oxygen and there is a reduced breakdown of nitrate (less denitrification), as a result of which more nitrate leaches into the groundwater.
- 2) Slower-growing crops consume fewer nutrients. As a result, more nutrients are left behind in the rooting zone, which increases the risk of leaching.
- 3) Due to the high level of evaporation, there is less recharging of groundwater and the nitrate concentration is higher in the water that does leach into the groundwater.
- 4) In low-lying areas, water from storage basins is allowed to enter the polders to keep the groundwater level high, as a result of which water that may contain higher concentrations of nutrients is introduced into the area.

Evidently, I believe the increase in nitrate concentrations and the decline in water quality associated with this to be undesirable. At the same time, we must bear in mind that this is the result of extreme weather conditions. Such weather conditions cannot, of course, be attributed to farmers and the Netherlands was not unique in this in Europe. Fortunately, we did not experience a repeat of the extreme summer of 2018 this year. I am therefore confident that the water quality will recover and we will be able to continue the improvement curve from recent years. The measures from the Sixth Action Programme of the EU Nitrates Directive contribute to this and I will therefore continue to implement them in full.

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