



European Commission
to the attention of
Commissioner Virginijus SINKEVIČIUS
Commissioner Wopke HOEKSTRA

Nijmegen/Tervuren, 01-02-2024

Subject: Complaint against The Netherlands

Dear Sirs,

On June 20, 2023, MOB and 'Grootouders voor het Klimaat' (Grandparents for Climate) filed a formal [complaint](#) to the European Commission (EC) regarding violation of Article 6, second paragraph of the Habitats Directive by the Dutch State (Ares(2023)4261045). In this complaint we justified why the Dutch State is violating its obligations under Article 6, second paragraph of the Habitats Directive. This provision requires the Netherlands to take measures to prevent deterioration in Natura 2000 sites. This process of deterioration has taken place over the past decades. In this letter we give an update of what has happened in the last six months.

Natura 2000 areas at risk since many years

Between [1970 and 1986](#), nitrogen surplus in agriculture increased rapidly due to growing non-land-based (intensive) livestock farming. Between 1986 and 2006, the nitrogen surplus in agriculture halved from 775 to 386 million kg N. In subsequent years, the surplus declined further, but at a much slower pace. Since 2010 the nitrogen surplus fluctuates but there is virtually no decrease.

A crucial milestone in this timeline is an [address](#) to José Manuel Barroso dated July 13, 2009 by former prime minister Jan Peter Balkenende in which he claims that 'Natura 2000 fails to strike a balance between ecological value, economic interests and other uses.' He therefore requests that the directives that form the basis of Natura 2000 'need to be brought up to date in order to strike this balance'. Balkenende's letter had come about without the knowledge of parliament and caused much discontent among its members. 'It is a curious, undesirable and fortunately completely unsuccessful intervention to undermine nature protection,' said then-Member of Parliament Diederik Samson in the Dutch newspaper [TROUW](#).

Commission President Barroso [replied](#) to Balkenende's letter on October 26, 2009. It states, among other things: 'The directives as they stand do provide the necessary flexibility to ensure compatibility between nature protection and economic developments. The Netherlands is particularly advanced when it comes to developing such integrated development approaches. Across Europe, the process of designation of terrestrial sites is nearing completion and the Commission's priority is to ensure that the Natura 2000 network is effectively managed and properly resourced. We therefore do not believe that a review would be justified.'

In spite of EC's response, the 'Programmatische Aanpak Stikstof' (PAS) was created in 2015. Under this scheme, many new permits for economic activities were issued that, on balance, led to increased nitrogen deposition on Natura 2000 areas. Rulings by the European Court on 7 November 2018 and the

Council of State on 29 May 2019 rendered the PAS inoperative because it did not comply with European legislation (Habitats Directive) nor the Nature Protection Act.

Nitrogen reduction act

The Rutte III government responded to this in 2021 with the [Nitrogen Reduction Act](#). This stipulates that by 2025 not too much nitrogen should be deposited on 40 percent of the vulnerable nature areas in the Netherlands. By 2030 this should be at least 50 percent and by 2035 74 percent. These are result obligations. In our complaint we argued that these objectives are insufficient to prevent further deterioration of Natura 2000 sites. Furthermore, an [analysis by RIVM](#) reveals that the Netherlands will not meet the target for 2025. In a [letter to the Senate dated January 18, 2024](#), Minister Van der Wal acknowledges that the nitrogen target for 2025 will not be met with the policy measures established in 2022. It can be concluded, the minister said, 'that in many areas the nature is not in good shape and additional measures are needed soon, because deterioration in many areas cannot be ruled out'.

Moreover, the [latest progress report on the nitrogen approach](#) shows that the prognosis for nitrogen reduction has been adjusted downwards considerably. In 2020, a reduction within a range of 103-180 mol/ha/y was assumed, but in the progress report this was reduced to 82-155 mol/ha/y. And even this reduction remains highly uncertain!

The [Ecological Authority](#), established by the Dutch government, recently concluded that many Natura 2000 areas are in a bad state and that insufficient nitrogen reduction measures are being taken to turn the tide. The Authority stresses that urgent measures are needed to prevent further deterioration and to improve the quality of the Natura 2000 regions.

Apart from nitrogen pollution, drought and poor water quality are among the causes. Sometimes it is due to groundwater levels that are too low, sometimes due to too much fertilizer or pesticides in the water. And sometimes due to a combination of those factors. In this respect it is relevant to mention that The Netherlands will probably not meet the requirements of the Water Framework Directive in 2026.

Outgoing government

The current outgoing government is currently targeting three measures for livestock farming: the buy-out scheme, the innovation scheme and a relocation scheme. The buy-out scheme has not yet delivered much results: only 32 farmers have been bought out, while the government was aiming for about 600. The relocation scheme is practically impossible within the Netherlands because the entire country is suffering under a "nitrogen blanket". Subsidized relocation to other EU countries could take place, but that seems to be in violation of EU rules. The innovation scheme is also risky because there are few techniques that do what is required in terms of nitrogen reduction, as was pointed out in our complaint. This was confirmed in several Court decisions¹.

Despite innovation is a risky path in livestock farming, the government still seems to be committed to innovation and risks to make the same mistake that was made in 2015 with the introduction of the PAS scheme. We therefore think that reduction of the livestock population, less import of fodder and a transition to nature-inclusive arable farming is the only way forward. Evidently, the government must ensure that farmers can make a good living from nature-inclusive farming.

New government

The political parties (PVV, BBB, NSC and VVD) that are currently in the process of forming a new government have expressed little ambition about the necessary nitrogen reduction in their election programs. If these parties succeed in forming a cabinet there is a real chance that the 2021 Nitrogen Act will be amended and the reduction targets will be put on the shelf.

¹ <https://www.recht.nl/rechtspraak/uitspraak/?ecli=ECLI:NL:RVS:2023:3695>
<https://www.recht.nl/rechtspraak/uitspraak/?ecli=NL:RVS:2023:3689>

We consider ourselves fortunate that the Dutch government has to respect the European Directives and to fulfil its obligations under Art. 6, second paragraph, of the Habitats Directive. In a [letter](#) by Diederik Samsom dated August 1, 2023 he writes that the Commission is determined to "continue a constructive dialogue with the Dutch authorities and to support them in the process and thus ensure compliance with the relevant EU legislation. The Commission will continue to closely monitor the measures taken by the Netherlands in this regard'. In order to help the EC with this task, we sent a [letter](#) to Samsom on November 8, 2023, in which we provided an update on latest developments, on the basis of which we requested the EC to start an infringement procedure against The Netherlands. The developments in recent months and those to be expected in the near future prompt us to reiterate this request.

We would appreciate hearing from you whether and when the EC will start an infringement procedure against The Netherlands as requested by us. We would also appreciate an exchange of views with you in the near future; we would be happy to meet in Brussels for this purpose.

Sincerely yours,



Johan Vollenbroek
Voorzitter stichting [MOB](#),



Frans Vollenbroek
On behalf of [Grootouders voor het Klimaat](#)