

From: [REDACTED]
Sent: mercredi 14 septembre 2022 17:58
To: [REDACTED]
Subject: FW: Flash meeting DG [REDACTED] NL SG Agri and nature [REDACTED] on NL nitrates derogation

From: [REDACTED]
Sent: Tuesday, July 5, 2022 12:34 PM

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NL authorities explained that they want to prepare for the meeting between Commissioner Sinkevicius and NL Minister of Agriculture [REDACTED] on Wednesday 6 July. NL started to explain their strong commitment towards the reforms and the inevitability of the reforms thanks to legal mechanisms to force the Provinces. They expressed concern that the strict additional requirements of the derogation proposed at technical level would be counterproductive with the proposed reform projects, as it will be contradictory with the bottom up approach of their reform plan. It will be difficult to convince the farmers. They presented 3 points they would like to take up with the Commissioner:

- 1) Reduction path of the derogated manure application rate: NL considers that the reduction rate proposed by DG ENV is too rapid and gives no time for farmers to adapt. They would propose a reduction path of 10 kg N/hectare per year, but then commit not to ask another derogation in 2026.
- 2) Designation of polluted zones: NL would like to keep the designation of the previous derogation, on the basis that they do not have a legal instrument to designate based on eutrophication.
- 3) Second derogation request on Chemical fertiliser replacement: realising that advancing on the second derogation request for processed manure is not possible now, they would propose to leave it out of the discussions now in exchange of a written commitment of the Commissioner that this derogation will be granted in 2023.

The Commission first explained the procedure for the derogation decision, and stressed that there is very little time left in order to have an opinion of the Nitrates Committee in September. The ISC must be launched by 15 July at the latest. This means that the draft document needs to be ready at technical level by Thursday 7 July, so that the internal approval can start on Friday. All technical documents which could help to finalise the draft decision need to reach us ASAP. Second, the Commission explained that the discussion with the Commissioner is not replacing a decision by the College.

On substance, the Commission welcomed the NL commitment to reforms and recalled how the reform path is framing the debate on the derogation, highlighting that the derogation cannot be contrary to the national goals, but must accompany them. The Commission recalled that the difficulty is created by the NL derogation request, which is going contrary to the NL reform and significant nitrogen reduction goals, and also not in line with the ambitious position NL is taking at international level on water quality. The Commission explained that many concessions have already been made by the Commission during the discussions at technical level, notably keeping the 2021 rates for 2022, and dropping the clause of a mid-term review. There must be equal treatment of Member States and the EU acquis must be respected. On the 3 points raised by NL, the Commission emphasised that there is very little margin of manoeuvre and the need for NL to manage expectations for the meeting with the Commissioner.

- 1) Second derogation request (RENURE): Commission agreed that it is safer to leave it out of the discussion, as it is impossible to discuss this as long as it is not clear the concrete conditions and impacts of the first derogation; indeed the cumulative impacts need to be taken into account. The Commission advises not to raise this point with the Commissioner.
- 2) On the designation of polluted zones: the Commission highlighted that the designation needs to include surface water eutrophication. There is case law on this and EU acquis, and we are following the same approach for all Member States. This is a technical issue, and the Commission can look constructively at a new NL proposal but the mapping of polluted zones need to include all areas where surface water is eutrophic.
- 3) On the reduction path: the Commission highlights this is a key issue as we should ensure that the derogation supports the reform path and the nitrogen reduction targets set by the NL government, and not instead delay necessary reforms in the agricultural sector. The Commission indicates that it has already proposed a smoother reduction path to NL.

At the end of the meeting NL surprisingly explained that on top of the 3 issues above, there were additional points, some of which Minister [REDACTED] could not agree:

- 1) NL could agree to reduce the manure ceiling by 10% by end of 2025
- 2) NL could agree with a reduction of 10% of the overall fertilisation rate by end of 2025
- 3) NL could agree with a ban on derogation in Natura 2000 sites, but cannot agree to the ban in the buffer zones around the Natura 2000.
- 4) NL cannot agree on the buffer strips along water courses.
- 5) NL cannot agree on the ban of derogations in Ground Water Protection Areas. NL would propose instead to have mandatory measures from January 2025.
- 6) NL cannot agree on an increase of physical controls to 10 %.

The Commission reminded NL authorities that time is running out. While the Commission wishes to support the ambitious plans of the NL government and acknowledges the concerns of the

intensive livestock sector having to adapt to them, the Commission should ensure the compliance of the derogation decision with the Nitrates Directive and be able to justify with the other Member States in the Nitrates Committee. The conditions have been set to be able to respect EU water legislation, in the face of deteriorating water quality, and to ensure that the derogation accompanies the NL reforms and the EU policy objectives.