



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
ENVIRONMENT

The Director-General

Brussels, 19/03/2004  
ENV D(2004) 330094

His Excellency Mr Tom de BRUIJN  
Permanent Representative of  
Netherlands to the European Union  
Herrmann-Debrouxlaan 48  
B-1160 BRUSSEL

Your Excellency,

Thank you for your letter of 18 December 2003 and the enclosed papers entitled “Third Action Programme Nitrates Directive (2004-07)” and “Interim programme nitrates directives 2004-2005” (English translations received on 16 January 2004). In the letter and in the annexes, the Netherlands sets out a preliminary outline of its third action programme under the nitrates directive, which represents its response to the ruling of the Court of Justice of 2 October in case C 322/00 and the obligation to review and if necessary, to revise the action programmes at least every four years.

We appreciate your rapid response to the Court ruling, my letter of 10 October 2003 and the follow up meeting between us. We welcome your commitment to put in place all the provisions necessary to ensure compliance.

In your letter and annexes, you also outline your proposed approach for a new derogation request according to Annex III and Article 9 of the nitrates directive. Following the meeting with the Commission Services of 10 December 2003 (joint report in Annex 1), the paper entitled “Third Action Programme Nitrates Directive (2004-07)”, acknowledges that a derogation request could only be based on an action programme fully in conformity with the directive and, therefore, distinguishes the issue of action programme from the issue of derogation.

Due to the delay that you estimate would be required to ensure the complete introduction of the action programme, you also indicate, in a separate document entitled “Interim programme nitrates directives 2004-2005”, the arrangements to be taken for the two year period in which the Netherlands prepares and puts fully into place the final parts of the action programme to comply with the ECJ decision.

On this latter issue, with regard to the timing to ensure the implementation of the measures required to comply with the Court ruling and while understanding the constraints of the legislative process needed to change NL legislation, you are aware of

our concern that the Netherlands is, in fact, seeking more than two years to ensure compliance.

While we understand that changes on the scale required cannot be introduced quickly, we believe that several of the measures should be applied within a shorter period. Faced with the need to comply with the Court's ruling, we consider that the Netherlands needs to demonstrate that it is moving as quickly as possible towards full compliance.

We are also concerned that the delays which you announce would mean non compliance with both the Waste Framework Directive (75/442/EEC) and the Dangerous Substances Directive (76/464/EEC) in so far as delaying the action programme would contribute to the worsening of phosphate pollution.

With reference to the papers "Third Action Programme Nitrates Directive NL (2004-07)", and "Interim programme nitrates directives 2004-2005", we note that they make reference to several key technical issues, which, you announced, will be addressed after the evaluation due in April 2004, including of the Fertiliser Act. As most of them are essential elements of the measures which should be part of the action programme according to annexes II and III of the Directive, our assessment can only be completed after their inclusion in your documents. However, in order to help you in future steps, you will find attached a technical annex (Annex II), which addresses in detail our comments and concerns. This annex should be regarded as an integral part of my reply.

It deals particularly with your paper "Third Action Programme Nitrates Directive (2004-2007)" and should also be considered as addressing some technical issues raised in earlier correspondence, prior the decision of the ECJ.

At this stage, I must reserve our position on the derogation request, as it can be analysed fully only on the basis of the conformity of the action programme with the ECJ ruling.

With regard to the paper "Interim programme nitrates directives 2004-2005" we would like to highlight, in particular, our difficulties in relation to:

- the two year delay in enacting the new maps on soils prone to leaching, which will be already available in spring 2004;
- the liberalisation of the phosphate standards introduced by regulation following discussion in the Parliament;
- the exemption of some sandy soils from the stricter policy on soils prone to leaching.

We also express our concern in relation to the efficiency of a new system to regulate manure production, the introduction of which is foreseen following the implementation of application standards.

We draw your attention to the need to further improve some of the measures of the Third Action Programme, which you estimated as already addressed in the NL legislation in force: this is the case, for instance, for the provisions on fertilisation near water courses.

In order to make progress on this important issue, I would propose that our Services meet for a technical discussion on the items addressed in the annex, some of which were also contained in the agreed minutes of 10 December 2003.

This could help to prepare further steps, following the incorporation in the Third NL Action Programme of the results of your evaluation in spring 2004, including eventually with regard to a derogation from an action programme in full conformity with the directive.

Yours sincerely,

(signed)  
Catherine Day

Annexes: Draft Joint Report meeting 10/12/2003

”Third Action Programme Nitrates Directive (2004-07)”, technical comments