

Ministerie van Landbouw,  
Natuur en Voedselkwaliteit

> Return address PO Box 20401 2500 EK The Hague

The President of the House of Representatives of  
the States General  
Princess Irenestraat 6  
2595 BD THE HAGUE

**Directorate of Administrative and  
Political Affairs**

**visiting address**

Bezuidenhoutseweg 73  
2594 AC The Hague

**Mailing address**

PO Box 20401  
2500 EK The Hague

**Government Identification No.**  
00000001858272854000

T 070 379 8911 (general)  
F 070 378 6011 (general)  
[www.rijksoverheid.nl/Inv](http://www.rijksoverheid.nl/Inv)

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**Annex(es) 6**

Date 25 November 2022

Concerns Progress of integrated approach to rural areas and follow-up of ruling  
Council of State about Porthos

Dear Chairman,

Mr Remkes' report was clear: it is necessary to emit much less nitrogen in the short term. We cannot do otherwise from an ecological, economic and social point of view. And this presents the government and society with a major and complex task, in which everyone must take their role and responsibility.

That is also a task in which, despite all the transitions, there must be perspective for farmers in the Netherlands. For a strong agricultural sector in balance with nature. This requires urgent action, in which all parties from the agricultural chain and other sectors such as industry make a contribution.

The importance of this became apparent once again when the Administrative Jurisdiction Division of the Council of State (hereinafter: RvS) issued a ruling on 2 November 2010 on the use of the building exemption. In short, the Council of State has judged that it is not sufficiently clear whether negative effects as a result of the exempt projects can be ruled out and that the measures that should prevent negative effects have not yet been implemented or have been insufficiently implemented. This meant that it was not certain that nitrogen-sensitive nature in Natura 2000 areas would not suffer damage and that the building exemption was in violation of European law.

In short, only when the pressure on nature decreases will there be more room to allow activities. We do not just improve nature because we have agreed to it, but precisely because our nature is of great importance to our quality of life. The air we breathe. The water we drink. And by restoring nature, more space is created. For PAS reporters, often farmers, who have been in uncertainty for years due to failing government policy. For which the nitrogen space has only gradually become available, and as a result of which legalization is slow. For the energy transition that will help us to become more sustainable, but for which there is currently no room to make this sustainability possible. And for construction, whether it concerns building new homes, strengthening dikes, constructing cleaner stables and barracks, or new railway lines and roads to get from A to B. A major task in which we must ensure that the quality of nature, water and soil, the environment and climate improves.

In this letter, the government announces that it will start with the approach proposed by Mr Remkes. In the short term, we will therefore, in coordination with the provinces, enable a larger group of agricultural companies (of the order of magnitude of 2000-3000) to make choices within a year on the basis of criteria that will soon be specified. We will work intensively with both agricultural companies and industrial peak loaders. We do this by asking them to make a choice for the future of their company within one year. This can be done in various ways for agricultural companies: making it substantially more sustainable through (a combination of) innovation, switching and extensification, relocating, or voluntarily stopping. For agricultural entrepreneurs there will be a cessation scheme that is as attractive as possible, there will not be a better scheme. For industrial peak loaders, we will set to work bearing in mind the tailor-made approach and with stricter permits. After a year, we will check whether this has yielded sufficient results. The aim is to be able to legalize a large proportion of PAS reporters and to allow projects of major importance.

Directorate of Administrative and  
Political Affairs

Our feature  
LGS / 22558512

If this does not work, then we must, with pain in our hearts, enter into a discussion with a targeted group in which mandatory instruments will be used if necessary.

For the longer term, the cabinet wants to build in incentives to make sustainability pay off, such as a form of pricing. We do this because the government is convinced that the sectors themselves are best able to reduce undesirable emissions and because the freedom of choice for the way in which this is achieved will then be in the hands of the entrepreneur himself. The cabinet will be working this out in the coming months so that it also becomes clear in the area processes what this means. This also helps individual entrepreneurs in making their choice.

In this letter, the government also tightens up the system of granting permission. We are announcing that internal netting will become a permit requirement. We will make external netting more robust with room for projects that contribute to the energy transition and we will update nature permits to prevent nature from deteriorating through the use of latent space. With these tightening measures we prevent nature from being put under further pressure unintentionally. At the same time, we will work on simplifying and standardizing the application and substantiation of a permit. In this way we help initiators to properly substantiate the individual assessment.

The government realizes that with this letter, the letter about the Future of Agriculture from the Minister of Agriculture, Nature and Food Quality (LNV), the letter Soil and water steering from the Minister of Infrastructure and Water Management (IenW) and my letter about the continuation of the National Program Rural Area, much is presented. These various proposals impact businesses, their owners and employees, and all the families that depend on them. For many this will mean that the activities have to continue in a different way, or sometimes in a different place. We will do everything we can to help these entrepreneurs shape the future as well. With the aim of working towards a society in which the economy and nature are in balance, where we maintain a strong agricultural sector and where nitrogen is no longer an impediment to building houses, doing business and increasing sustainability.

*Current situation PAS detectors*

Before going into the topics mentioned above, I think it is important to first pay attention to the current and serious situation of PAS reporters in the province of Overijssel. All PAS reporters have been in extremely uncertain times since the PAS ruling. For a number of PAS reporters in the province of Overijssel, a very serious situation has arisen because the province feels compelled to enforce. The deputy of Overijssel and I both find that appalling.

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Political Affairs

Our feature  
LGS / 22558512

Together with the province, I am doing everything I can to help these PAS reporters in Overijssel. We are executing the legally established legalization program with priority. The first room is already available. In addition, 250 million euros will be made available for provinces to apply tailor-made solutions and to further accelerate the legalization programme. Provinces can already take measures on the basis of pre-financing. If the measures meet the applicable criteria, there is certainty that the provinces will be reimbursed for the costs. The scheme for this specific benefit will come into effect at the beginning of 2023.

I also want to see what the differences are between the provinces with regard to external netting and other policy rules and whether there are still possibilities here to legalize PAS reporters as quickly as possible. In the short term, I will in any case do everything necessary to see whether enforcement can still be waived.

In the unlikely event that waiving enforcement is not possible, it is conceivable that there will be damage. The government is making every effort to compensate PAS reporters for damage due to unavoidable enforcement and is setting up a claims desk for this purpose. Of course, this does not only apply to PAS reporters in Overijssel, but to all PAS reporters where this is the case. The first principles for which situations may be eligible for compensation are explained in more detail on tackling nitrogen.nl. I understand that this does not remove the uncertainty of the people affected, but the cabinet is making every effort not to let these people fall.

## **1. Table of contents**

- o In Chapter 2, the Cabinet first briefly discusses the relationship of the Portho statement with the Dutch business and business climate. This shows that the urgency to solve the nitrogen problem is not only great for the good state of nature, but also for our economy.
- o In chapter 3, the government outlines the inevitable approach along two lines, which start at the same time: (i) an approach for immediate reduction of emissions and (ii) an approach for a permanent downward trend.
- o In chapter 4, various proposals are made for improving and simplifying the granting of consent. In doing so, I am also fulfilling the commitments to inform the House across the board about granting permission and about the results of the exploration into the undesired use of latent space<sup>1</sup>.

## **2. Establishment and entrepreneurial climate**

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<sup>1</sup> Parliamentary Paper 33 576, no. 260 and 265 and informed about the postponement in Parliamentary Paper 34 682, no. 99.

The Porthos ruling shows the need to improve nature and at the same time increasingly affects the business and business climate. Due to high inflation and declining purchasing power, growth and investment are declining<sup>23</sup>. Uncertainty about nitrogen regulations and the development of energy prices are partly to blame for this, resulting in the postponement of private investments in sustainability, which are urgent right now. It concerns investments that are necessary to achieve goals that we as a society consider important, such as bringing nature and the economy into balance, reducing greenhouse gas emissions, improving air quality with a view to our health and guaranteeing national security (such as defence). This threatens to put the Dutch economy at a disadvantage compared to neighboring countries, with possible adverse consequences for the quantity and quality of jobs in the Netherlands. This can lead to lower economic growth and purchasing power. The risk is that production will move beyond European borders, with the result that the Netherlands and the European Union (EU) will miss the opportunity to take the lead in making the economy more sustainable and achieving climate goals. The result is that we continue to use fossil energy sources for longer and continue to emit greenhouse gases and nitrogen.

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Political Affairs

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Due to the expected delays in housing construction, the pressure on the housing market will continue and labor mobility will be curbed.<sup>4</sup> The construction of hydrogen production capacity and green electricity landing sites, but also infrastructure sustainability projects such as Wind op Zee projects, solar parks, CCS, geothermal energy, nuclear power plants, will experience delays and become more difficult to achieve.<sup>5</sup>

For example, the Port of Rotterdam Authority indicates that 35 projects with a combined investment of 7.5 to 8 billion euros are already at risk due to the lack of nitrogen space. In Eemshaven and Delfzijl, 50 industrial projects with an investment sum of 5 billion euros are at stake.<sup>6</sup> The Netherlands Foreign Investment Agency (NFIA) indicates that the nitrogen problem is currently a major obstacle for foreign companies to (re)invest in the Netherlands. It is also a risk for the sustainability of agriculture. Major investments are needed to make agriculture more sustainable, for example in renovated stables. Desired jumps in scale for regional mainports, such as Brainport Eindhoven, will also be affected, as will the position of mainport Schiphol and the related hub function. All sectors, from SMEs to large companies, will be affected by the expiry of the building exemption. This therefore affects our sustainability ambition, as well as our earning capacity, employment, our economic security and strategic autonomy.

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2 OECD Economic Outlook (September) & European Commission Autumn Forecast (11-11-2022). The CPB does not assume a recession in their most recent basic forecast.

3 The CBS Investment Radar shows that the conditions for investments are less favorable in November than in September. This is mainly due to the decline in capacity utilization in the industry. The interbank interest rate also rose and entrepreneurs in the manufacturing industry were less positive about their order position (CBS, 21-11-2022). Source CBS Investment Radar: [https://www.cbs.nl/nl-nl/visualisaties/investment\\_radar](https://www.cbs.nl/nl-nl/visualisaties/investment_radar)

4 In October, the Economic Institute for the Construction Industry (EIB) calculated that, as a result of more difficult granting of permits, damage due to the decline in construction amounts to approximately 6 billion euros. This was before the ruling of the Council of State.

5 More than 85% of the planned emission reduction in industry up to 2030 is related to CCS, hydrogen and electrification. See Industry Project Pipeline on [www.dashboardklimaatbeleid.nl](http://www.dashboardklimaatbeleid.nl). Postponing these industrial projects can also have a major impact on sustainability in other climate sectors.

6 This is two and a half times as much as in 2019. Source: <https://fd.nl/economie/1453492/schade-door-politice-nitrogencrisis-is-al-28-mrd-ink2caiPjgY>

Given the accumulation of challenges and their urgency, the government is motivated to renew its approach to the business climate and the business climate. This is also indicated in the 'Strategic agenda for the business climate in the Netherlands'. The nitrogen approach outlined in this letter, which should lead to an improvement of nature, an immediate reduction in nitrogen emissions and a permanent downward trend, makes a crucial contribution to this.

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Political Affairs

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LGS / 22558512

#### *Efforts towards the European*

*Commission* For the European Commission, it is important that the Netherlands can demonstrate in the short term that the integrated, area-oriented approach inevitably leads to the achievement of the nitrogen, nature, climate and water targets and that the Netherlands thus meets the international obligations.

There are ongoing discussions with the Commission at both official and political level. The Netherlands' commitment in these talks is to underline the government's ambitions and sense of urgency to comply with international obligations and to ensure the necessary scope to do what is necessary to realize these ambitions, including the role of EU policy in supporting the necessary transition of the rural area.

### **3. Restoring nature and making space** The

nature in a large part of the Natura 2000 areas in the Netherlands is not in good shape, partly due to excessive nitrogen deposition. It is therefore important that nitrogen emissions are reduced. The nitrogen reduction that is achieved can be used for PAS detectors and subsequently for new social and economic developments if the road to nature restoration has been started sufficiently in the area concerned and deterioration of protected nature is prevented.

The Habitats Directive prescribes that efforts must be made to restore nature, which means that the deterioration of nature must be counteracted and the road to sustainable recovery is inescapably set. Before the reduction achieved can be used for permitting new activities, it must be clear that this space is not necessary for nature. This is known as the additionality requirement.

#### ***Additionality requirement:***

*For all nitrogen space due to deposition reduction that is created by source measures, a limited usability applies for the granting of nature permits. As the PAS ruling of the Council of State of 29 May 2019 already shows, it must be established that this decrease in deposition is not necessary to prevent the deterioration of Natura 2000 areas and to maintain the prospect of recovery. This assessment must take place at area level. And that assessment must still be up-to-date when the space (for example via the nitrogen bank) is earmarked for purposes other than nature.*

That is why the government proposes an approach below that is aimed at an immediate significant reduction in emissions and a permanent downward trend. So that nature recovers and more space is created for PAS reporters and subsequently for new social and economic developments.

### **Short-term approach for a direct downward trend - Peak loaders and general**

**termination scheme** The targeted and accelerated termination of emissions from peak loaders has been identified, albeit with a heavy heart, in the Remkes advice as the route to achieve the necessary nitrogen reduction in the short term. Mr. Remkes' advice is to first voluntarily give peak loaders the space to: (i) innovate or introduce a different business operation until there are hardly any emissions, (ii) relocate to another area or (iii) to stop voluntarily in accordance with a plus scheme to be set up for this purpose. In addition, setting a hard deadline for the choice of how to reduce is necessary in order to achieve the required result. Peak loaders must be fully supported and encouraged by the government in ways to voluntarily reduce emissions to (virtually) zero. If, in the end, it turns out that insufficient nitrogen reduction is taking place on the basis of voluntary efforts, the Cabinet, in accordance with Mr Remkes' advice, can only use mandatory instruments.

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Political Affairs

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LGS / 22558512

### Outlines and planning The

government has developed the above line of thought into an approach for peak loaders, taking into account the even greater urgency to arrive at a working short-term approach as a result of the Porthos ruling. In this letter, the government outlines the main points of the approach. It is also indicated how concrete follow-up steps will be designed in the coming period, such as determining the objectives of the approach, the criteria used to determine who qualifies as a peak loader and which entrepreneurs are eligible for the supplementary schemes.

First and foremost, the government would like to emphasize that we are talking about entrepreneurs, families, companies that work with heart and soul. The term peak loaders does not do justice to the people behind these companies. The approach will have a major impact, especially on these entrepreneurs and their families. Careful approach is therefore essential. The Cabinet therefore considers it undesirable to start from a list of peak loaders that can be drawn up quickly.

It does not fit into a careful process with an eye for the people behind the companies and requires consideration and substantiation at area level. We therefore choose to establish criteria with which it can be assessed whether companies qualify as peak loaders.

The peak tax approach requires companies with a relatively large impact to act faster and more intensively. The basis of the approach is that these companies have access, for a limited time, to schemes that other companies cannot use. The starting point is that access to and use of new and existing schemes and instruments by eligible entrepreneurs is voluntary.

At the same time, the government cannot rule out the use of mandatory instruments. In the autumn of 2023, the government will assess whether there is sufficient prospect of achieving the targets on the basis of the (anticipated) results of the approach. If not, mandatory instruments will have to be used.

The approach to peak loaders focuses on companies in the agricultural sector as well as companies in other sectors. There are differences in approach, in line with, among other things, the specific possibilities for reduction and the

available instruments, with the common denominator that target reach of the approach will be ensured. The approach in the agricultural sector will first be discussed below, followed by that in industry.

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Political Affairs

What should the approach deliver and by when In Mr

Remkes's estimation, the removal of 500-600 peak loaders would be sufficient in terms of magnitude for a substantial short-term step that could be built on. The approach proposed by the government is aimed at achieving such a step with certainty.

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LGS / 22558512

By January 2023 at the latest, the Cabinet will determine the quantification and term, whereby the Cabinet intends to do this in mol/ha/yr, if possible regionally and otherwise nationally. The government will provide a wide margin in this respect to provide as much certainty as possible to take a major step for nature and, where possible, to give priority to PAS notifications and then for other urgent social and environmental issues. economical developments. After all, the space created by voluntary reduction can in certain cases be used to legalize PAS reporters first and then to enable economic developments. In this, the cabinet also takes into account the extra pressure on legalization/licensing that follows from the Porthos ruling. For the same reasons, the approach is aimed at a significantly larger group of peak loaders (compared to Mr Remkes' report), so that a greater effect may be achieved.

An evaluation moment will follow in the autumn of 2023, in which, based among other things on the forecasts of the realization following use of the voluntary instruments, the willingness to participate in the National Termination Scheme for Livestock Farming Locations (Lbv) and the National Termination Scheme for Livestock Farming Locations Plus (Lbv+), the nature target analyzes and the area programmes, it will be assessed whether the approach provides sufficient insight into results. In areas where there is insufficient certainty that the target will be achieved, the government will deploy a mandatory set of instruments to achieve that target. The government will provide maximum support to agricultural entrepreneurs to prevent unnecessary delays so that there is an accurate picture during the evaluation moment and that many agricultural entrepreneurs do not have to deal with the implementation of mandatory measures unnecessarily. Before the summer of 2023, the government and the parties involved will make preparations to enable the use of mandatory instruments. Not all companies that qualify as peak loaders will have to deal with such measures during the possible transition to the mandatory phase. These will be aimed at specific companies and will be based on the need in the areas.

As part of the approach, the Cabinet is committed to registering all freed-up space and freed-up space that becomes available from the peak load approach in a register, and has opted for stricter management of the allocation of this space.

Criteria for peak loads

The cabinet will set criteria by January 2023 at the latest. These criteria are set in such a way that a wider group of companies with large nitrogen emissions can meet them, also in order to achieve a greater target range. Among other things, the government will determine the criteria for each area, partly in the expectation that this will lead to more room for, among other things, the legalization of PAS reports.

It is expected that the criteria to be determined will also include companies that, in the ultimate scenario, will have to deal with mandatory instruments to achieve emission reductions. The substantiation of which peak loaders may possibly be obliged to adjust or stop their activities from the approach is done per area and on the basis of the evaluation moment.

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Political Affairs

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LGS / 22558512

#### Instruments In

order to make innovation, change of business operations and relocation a realistic prospect for emission reduction, the Minister of Agriculture, Nature and Food Quality will make preparations with science, provinces and municipalities to expand or adapt the existing range. Naturally, we do this in consultation with agricultural parties. Various useful instruments already exist, such as the conversion programme, the Subsidy modules for source-oriented sustainability in stables and management measures (Sbv) and various measures under the CAP National Strategic Plan that facilitate extensification, among other things. I am in consultation with the European Commission about the possibilities of a relocation scheme and I am working on the possible use of a land bank to promote relocation and extensification. All these options will take into account as much as possible the other objectives of the area-oriented approach in rural areas.

#### Plus scheme: Lbv+

In accordance with Mr Remkes' advice, the government aims to open a financially generous termination scheme (Lbv+) in April 2023 (or earlier if possible) for companies that qualify as peak loaders. This scheme aims to give orders of magnitude of 2000 to 3000 peak loaders the opportunity to voluntarily stop on more attractive terms than would otherwise be the case. This scheme is characterized by 'the best possible offer'. Also in accordance with Mr Remkes' advice, this arrangement will be temporary, with a deadline for the choice to be made.

This scheme, which is designed by analogy with the Lbv7, offers generous compensation, whereby the government makes maximum use of the scope in the European frameworks with regard to state aid. In any case, this means a subsidy percentage of well over 100 percent. The offer made under this scheme is a one-off and applies for a limited period. After the scheme has been closed, no more financially attractive scheme will follow for the entrepreneur if the situation remains unchanged. This is therefore an important moment of choice for entrepreneurs who are considering stopping their livestock farming. It will be examined whether there are any tax obstacles that prevent parties from making use of the schemes to be opened up.

Parallel to this peak tax approach, the regular National Termination Scheme for Livestock Farming Locations (Lbv) will be opened (without plus) after approval by the European Commission. This is expected to happen just before or simultaneously with the opening of the Lbv+. Compared to the Lbv+, the Lbv scheme is aimed at a larger group of entrepreneurs.

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<sup>7</sup> This concerns a separate tranche of the National Termination Scheme for Livestock Farming Locations, but for a smaller group, who can receive a one-off higher compensation. The regular Lbv will open this spring after approval from the European Commission, and the intention is now to do this at the same time as the Lbv+.



Planning

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The planning of the approach is broadly as follows: **January 2023 at the latest**

Quantification of the objective of the approach and criteria and threshold values of the LBV+ for the current and to be started discussions with entrepreneurs.	
<b>April 2023</b>	Opening of Lbv and Lbv+
<b>Summer 2023</b>	Completion of preparation for deployment of mandatory instruments.
<b>Fall 2023</b>	Evaluation date Closing
<b>End of 2023</b>	date Lbv+ Start mandatory
<b>January 2024</b>	approach if the voluntary track yields insufficient results.

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LGS / 22558512

Implementation of the approach

For the implementation of this process, the Cabinet is setting up a taskforce together with the provinces, in which sector parties will be involved. In doing so, we make use of all the knowledge that the agricultural parties have of their supporters, and the regional knowledge of the provinces. Together with the provinces, we will ensure that the approach to peak loaders and the area processes are implemented together.

In view of the requested pace and the size of the operation, a temporary work organization in the form of a fully focused program management is required. This is set up within the Ministry of Agriculture, Nature and Food Quality. This program directorate, in coordination with the provinces, directs the discussions with the agricultural entrepreneurs. The discussions with industrial parties are organized separately by the Ministries of Economic Affairs and Climate (EZK) and IenW in collaboration with the competent authorities, as far as possible in combination with, for example, the tailor-made approach that is already underway in the context of climate.

The cabinet and the provinces attach great value to an approach based on the human dimension of those entrepreneurs who presumably qualify as peak loaders. This is because of the major impact for these entrepreneurs. That is why the government is committed to having one or more meetings with the relevant entrepreneurs as much as possible in January 2023, in coordination with the provinces. If the government is already in talks with the entrepreneurs concerned, for example in the context of area processes, this will be followed up.

These discussions can be used to discuss the range of reduction options, especially in the case of entrepreneurs who qualify as peak loaders. This provides insight into the options for the relevant entrepreneur when it comes to changing business operations, innovating, relocating and stopping. The entrepreneur will also be offered the opportunity to make use of independent advice. The government attaches great importance to entrepreneurs being broadly facilitated by all government bodies in making choices to make adjustments to their business operations, relocation or possible termination.

Those entrepreneurs who qualify as peak loaders and who want to stop can in any case use the Lbv+. In addition, in cases where provision has been made for a change of destination in the context of spatial planning

talks are started with entrepreneurs who want to start an amicable process (formally prior to expropriation) with the aim of voluntary termination against compensation. This can only apply to entrepreneurs who are (largely) located in a nature reserve (Natuur Netwerk Nederland or Natura 2000 area).

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#### Peak loaders in industry

In addition to the approach for agricultural companies, the accelerated reduction of nitrogen deposition and the sustainability of peak loaders in industry are necessary. It can be deduced from previous estimates that this is expected to involve an order of magnitude of 50 to 60 companies from the industry. This group will largely consist of companies from the basic industry, several of which fall under the Customization approach for the largest CO<sub>2</sub> emitters, but also a number of companies from the energy and waste processing sector.

The approach in the industry comprises the following tracks:

1. Tightening of permits: This concerns tightening current permits insofar as this is legally possible. This can lead to unavoidable results that can be realized quickly, because there are often still technical possibilities to reduce emissions<sup>8</sup>
2. Customized approach and win-win possibilities (reduction of NO<sub>x</sub> and CO<sub>2</sub> at the same time): It is examined what is extralegally and technically possible for each company for accelerated sustainability, and what the dependencies and preconditions are (such as energy infrastructure, licensing, knowledge sharing, and suitable personnel). This also includes costs and financing options.
3. Non-statutory reduction of ammonia emissions: At companies with a high NH<sub>3</sub> emissions that do not fall under tailor-made agreements are examined to see what is technically possible in addition to the permit requirements, and at what cost (effectiveness). The role of the company in the area process is also examined.

At the end of this year, the 'Expression of Principles' will be agreed with various companies as part of the tailor-made approach. In 2023, the talks about the above with the relevant industry and energy companies will be completed. This approach requires good cooperation between, among others, the Minister of Economic Affairs and Climate Policy, the Minister of Infrastructure and Water Management, the Minister for Climate and Energy (KenE) and the local authorities because of the shared responsibilities for both the various sectors and the instruments mentioned above. For example, the Minister of Economic Affairs and Climate Policy is responsible for basic industry, while the Minister of KenE is responsible for the energy sector. The State Secretary for Infrastructure and Water Management is responsible for environmental legislation and regulations, including waste management and industrial emissions, and system responsibility for licensing, supervision and enforcement tasks. As far as the instruments are concerned, the State Secretary for Infrastructure and Water Management is responsible for the legal framework and its implementation and enforcement by the competent authorities and environmental services. The Minister of Economic Affairs and Climate Policy and for KenE are responsible for making industry and the energy sector more sustainable, respectively, and have an additional set of legal measures to this end, such as the ETS system and the national CO<sub>2</sub> tax.

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<sup>8</sup> See Clean Air Agreement agreements, Government Gazette 2020, 12937

and voluntary measures (subsidies). The Minister of Economic Affairs and Climate Policy will act as the first point of contact within the cabinet for tackling peak loaders in the industry.

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Political Affairs

The sector goals that will be formulated at the beginning of 2023 for industry<sup>9</sup>, among others, may also be a reason to further develop the instruments for industry to achieve the goals of the approach to peak loaders. Mandatory measures will also be introduced in industry if the result is insufficient after a year. The design of this will be developed with the parties involved.

Our feature  
LGS / 22558512

**Medium to long-term approach - strengthening source measures, standardization and pricing** Strengthening source measures The measures from the structural nitrogen approach yield the first nitrogen reduction. However, the yield of this package is lower than expected, despite all efforts. As stated by the Council of State, many measures are voluntary in nature and therefore the outcome is still uncertain at this time. The government will vigorously continue these measures and where possible we will adjust and supplement them. The 500 million euros from the reserve resources of the structural nitrogen approach will be used for this purpose.<sup>10</sup> The government will also make 100 million euros available from the resources reserved for the Nature Compensation Bank. I intend to ask the King to authorize me to withdraw the Bill for Nature Compensation Bank<sup>11</sup>.

From this total of 600 million euros, an additional 400 million euros will be made available for the Clean and Emission-free Building (SEB) programme. We are setting up a Clean and Emission-free Construction Taskforce in which we, together with fellow governments, market parties and knowledge institutions, map out how we can use the resources for this program as effectively as possible, so that we can accelerate the sustainability of construction. Cleaner construction also has positive effects on nitrogen deposition and therefore on nature. In addition, 200 million euros will be reserved for a number of specific (non-statutory) nitrogen measures to be determined in the field of industry, construction and mobility, including the industrial peak loaders. And in the autumn of 2023, it will be assessed whether these resources have indeed been spent cost-effectively or whether they can be used for this purpose, for example for SEB.

In addition to the measures mentioned, I will continue to investigate, together with the ministers involved, which further measures are possible, in which I expressly seek the connection with the climate tasking, clean air and water quality.

#### Standardization and

pricing The cabinet will focus more on pricing and standardization in order to focus on the further realization of the objectives in all sectors. The government has opted for this because these instruments offer clarity to entrepreneurs. This increases the attractiveness of using the existing stimulating and subsidizing instruments. Various source measures and facilities can support entrepreneurs to reduce the

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<sup>9</sup> Parliamentary Paper 33 576,

no. 322 10 As announced in Parliamentary Paper 35 334, no. 133. This decision was planned for 2023, but has been brought forward.

<sup>11</sup> I will inform the House of Representatives about this soon.

necessary transition to sustainable business operations. At the same time, the government wants to prevent the use of additional mandatory instruments, such as expropriation.

Directorate of Administrative and Political Affairs

Standards and pricing provide incentives for companies to make their business formation more sustainable. Sustainable production is becoming relatively cheaper and polluting products also reflect the social costs in the price. This contributes to the necessary transition of the rural area. In addition, this stimulates innovation, for example for the development of individual measurement systems, such as the Substance Balance. By creating clarity in advance about which normative and pricing frameworks apply, companies are enabled to anticipate this in good time and not to wait. In addition, it can be an incentive to comply with the set frameworks through innovation.

Our feature  
LGS / 22558512

Standardization and pricing are not new instruments and the government is therefore building on existing and proposed policy. In the further elaboration, additional options will be worked out for all sectors, with an assessment of whether they can lead to additional effect. For example, there will be a standard for land-bound dairy farming and the derogation decision will contain a package of measures with which, among other things, the derogation standards for the use of animal manure will be phased out. The industry falls under the ETS, the industry CO<sub>2</sub> tax and the energy saving obligation which, although aimed at greenhouse gases, also lead to NO<sub>x</sub> reduction. In mobility, standards exist at European (emission standards for vehicles) and Dutch level (maximum speeds) and fuel and vehicles are priced.

Due to the major differences between sectors, basis and existing (climate) policy, one system is too complex. In the further elaboration, therefore, the pricing and standardization of the emissions per sector and substance type (in any case NH<sub>3</sub> and NO<sub>x</sub>) will be worked out in conjunction with the (climate) policy, without losing sight of the fact that every sector must inevitably contribute. In doing so, a link is expressly sought with the sectoral targets that will follow at the beginning of 2023.

In the further elaboration, account will be taken of, among other things, the undesirability of double taxation on the same basis, the complexity of a system change, the legal feasibility, practicability and the implementation period. Border issues are also taken into account. Modalities that will be further mapped out are additional standards, the nature of any pricing instrument (levy or emission rights), whether or not regional differentiation of the instruments and the basis to be used. In the further elaboration, the findings of the study group Norms and Pricing' will be involved and the connection with the National Program Rural Area and existing (climate and air quality) policy will be taken into account.

The House will be informed about the further elaboration in the spring of 2023.

#### **4. Strengthening and simplifying the granting of consent Robust**

and legally tenable granting of consent is crucial to provide certainty to initiators and competent authorities. In recent years, various court rulings have shown that the system for

granting permission does not offer the desired certainty in certain areas. No one benefits from this. That's why I'm taking steps to keep consent possible while making it less uncertain at the same time. In addition, I prefer less but more certain development space to more but uncertain development space. The government understands that at a time when development space is scarce, there is a tendency to retain and use the existing space as much as possible. With the steps I take it becomes clearer what is not possible, but also what is possible.

Directorate of Administrative and  
Political Affairs

Our feature  
LGS / 22558512

Together with the ministries and provinces involved, I have recently explored how the policy and instruments for granting permission can be clarified and tightened. Discussions with the sectors involved have also yielded useful insights.

The conclusion is that we will adjust the policy choices within the granting of consent on a number of points, on the basis that increases in deposition will be prevented and that simplifications will be implemented. With that in mind, I focus on the following points: (i) strengthening permissions to prevent increases in deposition, (ii) specific attention to special projects (sustainability, security/defense), (iii) facilitating and simplifying permissions and (iv) improving supervision and enforcement. Finally, under (v), I discuss a number of recent rulings by the Council of State, in which the use of Rav factors and grazing and fertilization have been tested. I interpret the statements and discuss additional policy. In the coming period I will further elaborate the policy implications together with the departments, provinces and sectors involved. Recent insights into the practice of granting consent are taken into account here.<sup>12</sup>

#### How is permission now arranged Before I go

into the points mentioned above, it is good to briefly outline how permission is now arranged. If an initiator wants to develop an activity that can cause significant negative effects on nitrogen-sensitive Natura 2000 areas, he must obtain permission from the competent authority. This is regulated in the Nature Conservation Act (hereinafter: Wnb).<sup>13</sup> To this end, he carries out an appropriate assessment. The competent authority assesses whether the Natura 2000 areas can deteriorate as a result of the activity. If this is not the case, a nature permit can be granted.

Although this is sometimes perceived as such, there is no question of nitrogen space as property or tradable right<sup>14</sup>. Subsequently, the competent authority is responsible for supervising and enforcing compliance with that permit.

In this way, the competent authority can monitor that developments are taking place in a responsible manner. This system applies to all sectors, activities and initiators, such as agricultural entrepreneurs, industrial companies and project developers. The government is also bound by this.

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<sup>12</sup> This concerns the interim balance of external netting with livestock farms, a desk study into the scope of latent space in Wnb permits, an analysis of fraud risks in external netting and an efficiency study into AERIUS Calculator. A summary of the research results can be found in appendix 1; the research reports are enclosed with this letter to Parliament.

<sup>13</sup> The focus of this letter is on the granting of permission under the Nature Conservation Act. The large nitrogen load on nature is also related to water quality, air quality and odor. Consent restrictions may also apply from these aspects. This letter does not deal with that.

<sup>14</sup> Ruling of the Council of State of 26 January 2022, ELCI:NL:RVS:2022:234

If nature is in good shape or if there are no Natura 2000 areas nearby, initiators often do not need to apply for a nature permit. But the reality is that many Natura 2000 areas are so overburdened that a nature permit is often required, and that that nature permit can often not be granted, or can only be granted under strict conditions.<sup>15</sup>

Directorate of Administrative and  
Political Affairs

Our feature  
LGS / 22558512

**(i) Strengthening of permissions** Balancing

(internal and external), permit obligation for internal balancing At present, new developments are still possible to a limited extent, in particular according to the principle of netting. This means that an initiator mitigates the extra nitrogen deposition caused by its activity. This can be done by ensuring that another activity that causes nitrogen deposition stops or that emissions are reduced (external netting) or by making adjustments within the project itself, for example by using clean techniques (internal netting). The starting point of net metering is that nitrogen deposition in nitrogen-sensitive Natura 2000 areas does not increase and that these areas cannot deteriorate. Other ways in which new developments are possible under certain conditions are the ecological assessment, the ADC test and leasing.

Obligation to apply for a permit for internal *netting* At present, initiators do not (any longer) need to apply for a permit for internal netting. It follows from the ruling of the Council of State of January 20, 2021<sup>16</sup> that internal netting is no longer subject to a license requirement since the Nitrogen Emergency Act. This leads to bottlenecks in practice in the areas of permission, supervision and enforcement. The result is that it is more difficult for initiators to demonstrate that they have permission for their activity. This can also cause problems for the financing of investments. It is more difficult for supervisors to determine whether an activity is being carried out in accordance with the legal frameworks. And competent authorities no longer have the option of setting conditions for internal netting via policy rules.

I want to limit this uncertainty for initiators and competent authorities and create more insight and steering options for competent authorities. That is why I am introducing a permit requirement for internal netting as soon as possible, which applies to all sectors. This means that an initiator will request permission from the competent authority if he wants to make an adjustment to his company if that adjustment can lead to nitrogen emissions and deposition on nitrogen-sensitive Natura 2000 areas, even if the total emissions of the activity do not increase or decrease. The competent authority weighs up the interests and decides on the basis of this whether a nature permit will be granted, possibly subject to certain conditions.

With the permit obligation, I ensure that after new internal nettings, the nature permit corresponds to what is happening on the farm. This also means that initiators more often need permission for developments at their company. That is annoying, but it is necessary to better regulate and monitor the effects on nature. At the same time, I want to prevent initiators from passing the competent authority for every minor adjustment to their company

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<sup>15</sup> The legal test is whether a particular activity or project causes significant negative effects on the protected nature in Natura 2000 areas.

<sup>16</sup> ECLI:NL:RVS:2021:71

authority must. It is therefore the intention to limit the scope of the permit obligation.

Directorate of Administrative and  
Political Affairs

The permit obligation for internal netting is laid down by law. I will include this in the announced amendment to the law for adjustment of the environmental value. Currently working out in different variants, especially with regard to the method of containment. This can be done either by a lower limit and the specific exception of certain categories of activities or by linking up with activities that require a permit in the environmental track, supplemented by a number of categories of activities for which notification in the environmental track is required. I am including both variants in the amendment to the law, so that a final choice can be made about the curtailment on the basis of the responses from the internet consultation and on the advice of the Advisory Division of the Council of State. The amendment to the law will provide for transitional law for projects where internal netting has taken place before the permit requirement comes into force. The aim is for the bill to enter into force on 1 January 2024.

Our feature  
LGS / 22558512

In the coming period, I will work with the relevant ministries, provinces and sectors to further develop the conditions for internal netting, for example with regard to latent space (see later in this section). I think it is important that the conditions not only match the policy intention, but are also workable in practice for initiators, licensing authorities and supervisors.

The conditions then land in policy agreements and rules. These are ready for the entry into force of the permit requirement.

#### *External netting*

To prevent governments from surprising each other, the central government and the provinces have made inter-administrative agreements on external netting, whereby it has been agreed that the central government will inform the provinces in advance about proposed transactions based on external netting. Provinces can use this information – partly in the light of the area-oriented approach – to consult with an initiator about the purchase where necessary, for example to coordinate management measures against decay and vacancy, possibilities for joint initiatives (win win situations) or when a proposed purchase is (also) necessary for nature objectives. If the central government is the competent authority, it will be informed by the provinces. In the coming months, in consultation with the provinces and the departments involved, I will come up with new and tightened rules and, where necessary, record them in the policy rules.

#### Priority for emission capacity and first right to purchase

The Cabinet is committed to prioritizing the possibilities for using emission capacity, as long as this is necessary in the context of area programs, in order to maintain control over the use of nitrogen capacity that becomes available through external net metering.

This prevents parties from competing with each other on the basis of different tasks and interests and the government retains control in the rural area. In the coming period, the government, together with the provinces and the sectors involved, will work out how this right will be shaped in practice, for example through policy rules.

In addition, the government is exploring the legal options for establishing a pre-emption right on land with an agricultural function. This offers

the national government and the provinces have the opportunity to manage the use of agricultural land, direct regional processes and choices in the rural area, for example with regard to extensification, and offer the opportunity to counter speculation. The government is investigating whether and how the Environment and Planning Act (chapter on land ownership) will be amended for this purpose. The possibility of business succession will not be limited.

Directorate of Administrative and  
Political Affairs

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LGS / 22558512

### Tackling latent space

Although latent space can be important for individual initiators to come to new developments, it poses a risk in the system of granting permission. When latent space is taken into use, the actual nitrogen deposition increases and the nitrogen-sensitive Natura 2000 areas may deteriorate. Because latent space is a complex and technical concept, I first explain what it is, then explain why it poses a risk, and finally outline a two-pronged approach.

#### *What is latent space*

If a project causes less nitrogen emissions and deposition than is permitted on the basis of the nature permit, then there is unused space. In certain cases this is inherent to business operations, for example when a company has an irregular business cycle, responds to seasonal effects or is under construction. Think, for example, of a stable that is temporarily empty, because it is cleaned after the removal of animals before new animals are brought in, or a power plant that must be able to run at maximum if another power plant is defective. I agree that this breathing space in the permit is necessary for many companies and define this as commercial space. That is not the approach in this letter.

The unused space in a nature permit that is not inherent to operational management is latent space. That is the approach in this letter.

Latent space can arise in various ways, for example through stricter environmental requirements, the application of cleaner techniques or when business plans change over time. Together with competent authorities and sectors, I will further elaborate the distinction between commercial and latent space, so that it can be applied in practice.

Latent space can be put to use in a number of ways. For example, an initiator can expand his activity within the permit, for example by increasing the production capacity of a factory or the number of animals in a stable. An initiator can also develop a new activity based on internal netting. As long as internal netting is not subject to a permit requirement, no conditions can be imposed on this. Finally, an initiator can develop a new activity based on external netting. External netting is subject to a permit.<sup>17</sup> Conditions have been set for this via policy rules to prevent latent space from the nature permit of one initiator from being used by another initiator, but this use of latent space via external netting is not always possible. excluded.<sup>18</sup>

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<sup>17</sup> External netting is a mitigating measure and therefore requires an appropriate assessment and nature permit.

<sup>18</sup> External netting is only allowed with actually realized capacity. 30% of this is skimmed off.

This percentage is based on the average latent space in nature permits. In this way, the actual increase in deposition on nitrogen-sensitive Natura 2000 areas is limited.



*Why is latent space a risk* The moment latent

space is taken into use, and is therefore no longer latent, this means extra nitrogen emissions and deposition. This can pose a risk to nitrogen-sensitive Natura 2000 areas. And that makes activities vulnerable to legal proceedings, for example about withdrawal requests. Sometimes the impression is wrongly created that initiators can simply use all the latent space, which potentially leads to a lot of extra nitrogen emissions and deposition. That is not the case. Initiators often have to deal with restrictions due to other regulations or financial and economic circumstances. However, I want to emphasize that latent space is a vulnerability in the consent system. Discrepancies between nature and environmental permits also lead to uncertainty for initiators and competent authorities.

Directorate of Administrative and  
Political Affairs

Our feature  
LGS / 22558512

I want to limit the risk for the Natura 2000 areas and offer more certainty to initiators and competent authorities. That is why, together with the departments and provinces involved, I have developed a two-track approach that applies to all sectors where latent space may exist. One track concerns the limitation of latent space in nature permits; the other track is aimed at limiting the utilization of latent space. The approach is therefore primarily aimed at the moment when latent space threatens to enter the system.

*Limiting latent space in nature permits* Latent space can

be limited by regularly updating nature permits to ensure that the permit is in line with what is happening on a farm. I do not choose to introduce a legal obligation to update. This would mean that competent authorities would have to regularly review all nature permits, which would entail too great an implementation burden. Instead, I choose to link the updating of nature permits to the moment when an initiator wants to make adjustments to his company. This means that the actualization is aimed at the moment when latent space threatens to arise in the system.

This update works as follows. If an initiator wants to make adjustments to his company, he must submit a permit application to the competent authority. He then assesses the adjustment and brings the nature permit in line with the entire activity. The competent authority can also bring the nature and environmental permits more into line with each other. The permit obligation for internal netting makes it possible to do this.

The initiator then has a certain period of time to realize his activity. For external netting, the provinces have agreed a realization period of three years in their policy rules; for internal netting we look at this in the elaboration of the policy rules. The idea of a realization period is that an initiator must be given a reasonable period of time to build up his activities, but may not continue to make unlimited use of this space.

This reasonable term may differ per type of project. If an initiator does not (fully) use the space in its permit for a long period of time for no apparent reason, the competent authority will update the nature permit.

In the coming period, I will be working with the relevant ministries, provinces and sectors in further detail on how this update of nature permits will work in practice.

can be used, and will record this internal netting when the permit requirement comes into force.

Directorate of Administrative and  
Political Affairs

*Restricting the use of latent space for new developments* The use of latent space for new developments can be further limited by setting conditions for netting. As mentioned, the current agreements and rules partly provide for this. The intended permit obligation for internal netting makes it possible to set conditions; I will be developing these in the near future together with the departments and provinces involved. The policy rules governing this will be ready when the permit requirement comes into force.

Our feature  
LGS / 22558512

The existing conditions will also be further tightened for external netting. The government is committed to making inter-administrative agreements on raising the skimming percentage for external netting to 40%. The government is investigating whether it is possible to apply a lower skimming percentage of 20% for projects that contribute to emission reduction in the long term, such as projects in the context of the Multi-year Infrastructure and Climate Program (MIEK), and will inform the House in the first quarter of 2023. to inform. Competent authorities retain the policy freedom to make additional adjustments, for example when the state of nature in a certain area requires additional conditions.

The cabinet is also making agreements with provinces to prevent netting with so-called dormant permits. The government believes that it should not be possible to make new developments possible on the basis of activities that have been discontinued for some time. I will consult with the provinces, as competent authorities, with the aim of adjusting the policy rules for external netting in the first quarter of 2023.

Finally, we work out restrictions for nitrogen space that arise when initiators implement nitrogen-reducing innovations in their companies.

If these innovations are intended to meet legal requirements and/or are subsidized by the government, then that space may not simply be used again. Together with the provinces, I will determine the policy rules for internal netting at the time of the entry into force of the permit obligation on 1 January 2024.

**(ii) Specific attention for special projects** I want to prevent the policy adjustments from getting in the way of future policy with regard to sustainability and the legally established climate goals.

That is why I am exploring whether it is also possible to impose no or fewer restrictions on projects that cause an increase in nitrogen emissions and deposition in the short term, but produce a substantial decrease in the longer term, which contribute to nature restoration. These are mainly energy transition projects, such as projects in the context of the Multi-year Infrastructure and Climate Program (MIEK). Consultations on this are also taking place with the European Commission in the context of Repower EU.

Together with the Ministers of Defense and Infrastructure and Water Management, I am also investigating how and where, for example in legislation and regulations, account can be taken of the position of the Ministry of Defence, respectively projects within the framework of the WFD and flood risk management. The Secretary of Defense has corporate

space needed for the operational readiness of the armed forces. This includes, for example, driving, sailing, flying, practicing and shooting. The operational management of the Ministry of Defense is characterized by fluctuations. By entering into or terminating missions, as a result of which personnel and material are sent abroad or return, and due to variations in exercise programmes, use may temporarily be less than permitted under the permit, or full use may occur.

Directorate of Administrative and  
Political Affairs

Our feature  
LGS / 22558512

In addition, space is needed for strengthening the armed forces, about which agreements have been made at the NATO and European level, the coalition agreement and the Defense Memorandum 2022.

**(iii) Facilitating and simplifying the granting of consent** Given the complexity of the granting of consent, I want to do everything possible to facilitate and simplify its implementation as much as possible, not to unnecessarily delay economic and social developments.

Facilitation: nitrogen registration system, nitrogen banks and prioritization The cabinet is committed to registering all space that becomes available and space that becomes available, including space that becomes available from the peak loader approach, in a register and opts for stricter management of the allocation of this space to priority projects of national interest (including the PAS reporters).

With this, the cabinet is working on the motion of member Grinwis cs19 to make nitrogen space available in an orderly and transparently registered manner via a nitrogen bank if there is a need for nitrogen space for the implementation of projects of great social value.

The national government and the provinces have already jointly set up a register of nitrogen banks to facilitate external net metering and to manage the scarce nitrogen space. This includes the national nitrogen registration system (SSRS), specific provincial target banks and a nationwide microdeposition bank.

The purpose of the register of nitrogen banks is to register nitrogen space so that it can be allocated at a later time. For all banks it is indicated in advance what the registered nitrogen space can be used for. It goes without saying that only nitrogen space that is not necessary for the conservation and restoration of nature, and is therefore additional, can be registered for the purpose of granting permission.

In the national SSRS, nitrogen space is registered that originates from a number of national source measures. At the moment, this is room from the Subsidy Scheme for Restructuring Pig Farms (Srv). Next year, with a change in the regulations, the Targeted Purchase Measure (MGA-1) and from the Walstroom subsidy scheme will be included as a new source measure with which space can be registered in the SSRS. Space from the SSRS can be used for (clusters of) housing projects, the seven MIRT projects and for the legalization of PAS notifications.

The provinces have established nine provincial target banks and have also established a joint provincial microdeposition bank. In the provincial target banks, space is registered that becomes available through provincial source measures. The space from these benches is used to

to realize initiatives that fall within the objectives of each of these banks. At the moment, no initiatives have yet been realized with space from these provincial target banks. In the microdeposition bank, space is registered that remains after external netting (free-falling space). In addition, provinces can choose to register space from source measures in the microdeposition bank. The space from the microdeposition bank is used to enable initiatives with low deposition (less than 0.05 mol per hectare per year).

Directorate of Administrative and  
Political Affairs

Our feature  
LGS / 22558512

In the coming period, I will work with the relevant ministries and provinces to further develop the register of nitrogen banks. The national target banks will be set up at the beginning of next year.

Considering the motions of member Boswijk (CDA) cs20 and member Bishop (SGP)21; and the importance of, among other things, the accelerated legalization of PAS notifications, the government has (as announced in my letter of 15 July) accelerated the availability of 250 million euros by bringing forward the resources from the second tranche of the national livestock farming termination measure ( lbv). In addition, it is being investigated how new source measures can result in more nitrogen space in the SSRS and nitrogen banks and the prioritization of this space will be discussed (again). I therefore consider the Boswijk motion (CDA) to be over. I will further inform the House in the spring of 2023 about the priorities for which National Goal Banks have been established and about the way in which the available nitrogen space is prioritized.

#### Simplifying permission As a result of the Porthos

ruling, initiators of construction projects must in most cases carry out calculations and ecological assessments to determine whether the activity requires a permit. This leads to delays and increased costs. This may be exacerbated by capacity shortages at research agencies and governments, which must conduct and assess the research. The government is pursuing a two-track approach to simplifying the granting of authorizations and limiting the administrative burden. This concerns the short term and the long(er) term. The aim is to support market parties and to provide clarity about whether calculations and assessments are necessary or not.

In the *short term*, the government is working on standardization by means of key figures or rules of thumb in order to reduce the administrative burden for initiators. The purpose of this is to quickly provide insight into whether an activity does not require a permit. The aim is to translate detailed calculations into concrete activities, such as the size of a housing project and the degree of sustainability of the construction equipment used. This reduces the calculation burden for initiators. This provides market parties with a quick insight into whether calculations are necessary. The government is working with experts, local authorities and social partners on this.

Practical applicability is the starting point and the latest scientific insights and legal tenability are leading. The government aims to provide clarity about this to initiators in the first quarter of 2023. In combination with the bet on

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20 Parliamentary Paper 35 925-XIV, no. 104

21 Parliamentary Paper 33 576, no. 276

making construction more sustainable, this will probably help many small construction projects.

Directorate of Administrative and  
Political Affairs

In order to structurally reduce the administrative burden for construction projects with low nitrogen emissions, in parallel with the above-mentioned elaboration of key figures or rules of thumb, the Cabinet is examining the possibilities of applying a lower limit for these projects ('generic preliminary assessment'), including a project that does not require a permit. is. Legal sustainability is leading here.

**Our feature**  
LGS / 22558512

The government will inform the House of Representatives about this in 2023.

For the *longer term*, the aim is to simplify the granting of permissions and to offer more development prospects for economic and social activities. The government will therefore investigate the possibilities for a new system of granting permission. The implementation in legislation and regulations, as well as their actual application, can take place as soon as nature and source measures have been implemented and the state of nature has demonstrably improved. The exploration of this new perspective on consent can be started earlier. The starting points are that a new system is future-proof and practically applicable, and that scientific substantiation and compliance with the requirements of the Birds and Habitats Directives are leading.

**(iv) Improving supervision and enforcement** Supervision

and enforcement are an essential part of the consent system. The effectiveness of policy stands or falls with its compliance, as laid down in laws, regulations and permits. Through supervision, the competent authority checks whether an initiator carries out his project in accordance with the applicable frameworks. If that is not the case and initiators do not make use of the recovery options offered by the competent authority, enforcement will take place, for example by imposing an order subject to periodic penalty payments or withdrawing a permit. For example, competent authorities can ensure that developments take place responsibly and that the nitrogen-sensitive nature in Natura 2000 areas does not deteriorate.

Next year, together with the departments and provinces involved, I will have an independent study carried out into the way in which competent authorities implement supervision and enforcement of nature permits under the Wnb with regard to nitrogen. With this I want to gain more insight into possible bottlenecks and possibilities to solve them. Based on the results, we will look at what steps we can take to further strengthen the system.

In doing so, we look, among other things, at the information position of competent authorities, the visibility of supervision and enforcement, prioritization and associated capacity.

With this research, I am implementing the Grinwis (CU) cs22 motion to improve the supervision of permits and the information position of competent authorities, and the commitment to the Senate Janssen (SP)<sup>23</sup> regarding active permit management. In the research I include the recommendations of the

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<sup>22</sup> Parliamentary Paper 33576, no. 308

<sup>23</sup> Promise to inform Janssen (SP) of the Senate about the state of affairs regarding active permit management before the end of this year.

the Van Aartsen Committee<sup>24</sup> and I am seeking to join the inter-administrative program to strengthen the VTH system about which the House has already been informed.<sup>25</sup>

Directorate of Administrative and Political Affairs

**(v) Recent rulings by the Council of State** Rav factors in nature permits A great deal of uncertainty has recently arisen about low-emission housing systems.

Our feature  
LGS / 22558512

Various nature permits for three types of housing systems have been tested in court. The Council of State recently ruled that it cannot be ruled out that the Natura 2000 areas will deteriorate.<sup>26</sup> In addition, various studies<sup>27</sup> show that low-emission housing systems do not always deliver the intended emission reduction. As a result, the Rav factors for low-emission housing systems, on the basis of which nitrogen emissions are determined, provide an insufficient basis for granting permission.

Together with the departments and provinces involved, I analyzed the meaning of the ruling of the Council of State and the investigations. The government sees no other conclusion than that nature permits for all new low-emission housing systems can only be granted under stricter conditions.

This is the only way entrepreneurs have a certain permit and we can prevent the Natura 2000 areas from deteriorating as much as possible. This will give initiators and competent authorities more clarity and certainty, but that does not make the message any less annoying.

For the government, innovation remains an important part of the agricultural transition. The main thing is that the application of low-emission housing systems at a national level does lead to nitrogen reduction, as also appears from the WUR study (see the report in appendix 2). The problem with granting permission is that the intended nitrogen reduction at individual farm level is insufficiently certain, which means that it is not certain that nature will not deteriorate further. Together with the competent authorities and the agricultural sector, the government is taking steps to improve this.

Below I will discuss the Rav factors, the ruling of the Council of State, recent investigations, the consequences for agricultural entrepreneurs and the next steps. With this I also fulfill the commitment to the House in my letter of 12 September 2022<sup>28</sup>.

#### *What are Rav factors*

The Low-Emission Housing Decree sets emission limit values to regulate nitrogen emissions from stables at a national level. The emission factors from the Ammonia and Livestock Farming Regulations (Rav factors) have been developed for this purpose. Each type of housing system has a Rav factor, which indicates how much nitrogen emissions this housing system causes on average.<sup>29</sup> These Rav factors have also been used to date for granting nature permits. They are included in AERIUS Calculator, the calculation system that promoters and competent authorities use to calculate how much nitrogen deposition a certain project, in

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<sup>24</sup> Parliamentary Paper 22343, no. 295 and Parliamentary Paper 22343/28663, no. 336 <sup>25</sup> Parliamentary Paper 22343, no. 336 <sup>26</sup> Judgments of the Council of State on 7 September and 12 October 2022 (202106900/1/R2, 202106908/1/R2 and 202106915/1/R2, 202106903/1/R2)

<sup>27</sup> For example, the CBS analysis '[Nitrogen loss from stored manure](#)' ([cbs.nl](#)) and Parliamentary Papers 29383 and 28973, no. 382, appendix.

<sup>28</sup> Parliamentary Paper 29383, no.

<sup>29</sup> 368 <sup>29</sup> Per animal place per year.

in this case a new or adapted stable, caused on nitrogen-sensitive Natura 2000 areas.

Directorate of Administrative and  
Political Affairs

#### *Council of State rulings*

Nature organizations have filed various lawsuits against internal net metering and nature permits for low-emission housing systems that have been granted on the basis of the Rav factors. They indicate that it cannot be ruled out that nature will deteriorate. The RvS recently ruled on a number of cases in the context of three types of existing low-emission housing systems used in dairy farming.<sup>30</sup> The RvS ruled that these nature permits should not have been granted without further ado, because only on the basis of the Rav- factors, it cannot be ruled out that nature will deteriorate. In addition, the decrease in nitrogen emissions was used to keep more animals (internal net metering), making it even more difficult to determine that nature in Natura 2000 areas is not deteriorating.

Our feature  
LGS / 22558512

#### *Studies into low-emission housing systems* On 14

October 2018, the State Secretary for Infrastructure and Water Management sent the report by Wageningen Livestock Research (WLR) on the effectiveness of low-emission housing systems in practice to the Lower House<sup>31</sup>. The policy response to this study will be received separately by the House. This report concludes that major improvements are necessary and possible within the system of design, assessment and use of low-emission housing systems and the development of the Rav factors. This is a broad study of low-emission barns (poultry, dairy and pig barns) in which it is stated that it is not certain whether the efficiency of the barns, as shown by the Rav factor, will actually be achieved. To obtain more certainty about this, further quantitative research must be carried out.<sup>32</sup> At the moment, however, this means that there is uncertainty about nitrogen emissions as a result of the stables.

In addition, this study is relevant for granting permission, because it also concludes that the Rav factors are not intended to make an estimate at individual farm level of nitrogen emissions and deposition by a particular house. This conclusion is not so much about whether the factors are a correct representation of the average emission, but whether they can be used at all for calculating deposition patterns for the purposes of the Wnb. The researchers indicate that for this reason it is necessary to use an uncertainty factor before granting permission.

The government remains committed to innovation in the transition of agriculture, and has therefore asked Wageningen University & Research (WUR) to conduct additional research into the aforementioned uncertainty factor. The research question was whether it is possible, when granting permits for low-emission dairy barns, to anticipate that the barns at individual farm level do not always deliver the expected average emission reduction. By applying an uncertainty factor or confidence interval when using the Rav factors, the reduction of nitrogen emissions and deposition could be calculated with more certainty and the Rav factors could possibly be used in a different way for consent (see the report in Annex 2).

<sup>30</sup> Judgments of the Council of State on 7 September and 12 October 2022 (202106900/1/R2, 202106908/1/R2 and 202106915/1/R2, 202106903/1/R2)

<sup>31</sup> Parliamentary Papers 29 383 and 28 973, no. 382,

appendix 32 More information on this can be found in the policy response that the State Secretary for Infrastructure and Water Management will send to the House this year in response to the WLR report.

In this requested study, WUR has investigated for a number of low-emission dairy barns that are part of the Rav list whether it is possible to apply an uncertainty factor when granting Wnb permits. WUR conducted this research based on the original measurements. While the Rav factors are based on average nitrogen emissions, the research shows that nitrogen emissions at individual farm level vary greatly by time and by location.

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Political Affairs

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LGS / 22558512

For permission to be granted, it is necessary to be able to estimate the nitrogen emissions of a specific company and thus prevent nature in Natura 2000 areas from deteriorating. It is a major setback that this study shows that the application of an uncertainty factor means that it is hardly possible to assume an emission reduction in individual cases.

#### *Consequences for agricultural entrepreneurs*

Together with the ministries and provinces involved, I have analyzed the significance of the rulings of the Council of State and of the above-mentioned studies. We can only conclude that the rulings of the Council of State on the three housing systems in these cases will also have consequences for all types of low-emission housing systems from the Rav (which are included in appendix 1). This is because there is uncertainty about the level of ammonia emissions for all these systems. In addition, there are more legal proceedings in which other housing systems are being questioned. In order to prevent more farmers from becoming insecure due to legal proceedings, account must be taken of the possibility that the low-emission stables will perform less well in practice than expected. It is therefore important that we first have more clarity about how the systems work in practice. This means that initiators must apply for a nature permit when using these housing systems and that these can only be granted under stricter conditions. Because continuing in the current way leads to legally uncertain situations. This is the only way we can prevent nature in Natura 2000 areas from deteriorating as much as possible and offer more certainty to initiators and competent authorities.

In principle, there are no consequences for nature permits that have already been granted and for which it is no longer possible to lodge an objection or appeal. The same applies to agricultural entrepreneurs who have built a low-emission housing system based on internal net metering and have received a positive rejection of their permit application from the competent authority. In both cases, therefore, there is no reason for competent authorities to enforce.

For agricultural entrepreneurs who intend to build a new low-emission housing system, this means that they must apply for a nature permit and carry out an appropriate assessment. If some housing systems reduce earlier with sufficient certainty, it will be easier to grant permits. The cabinet and the provinces are committed to making the permit application procedure as simple as possible and to support agricultural entrepreneurs as well as possible. In consultation with the provinces, and of course with the agricultural sector, a guide is being written that shows what is currently possible; the aim is to have it ready by mid-2023. Only the calculation in AERIUS Calculator, based on the Rav factors, is no longer sufficient.



*Continuing with*

*innovation* Together with the Minister of LNV, the provinces and the sector, I am committed to improving the regulations in nature permits for the use of low-emission housing systems. With this I want to ensure that agricultural entrepreneurs use low-emission housing systems in such a way that the intended emission reduction is actually achieved and there are more possibilities to get and keep the housing systems licensed with certainty. I do not intend to make the procedure more difficult, but to create certainty for entrepreneurs. In addition, I will examine the consequences of this problem for the nitrogen approach. The results of a WUR analysis on the usability of low-emission techniques are expected at the end of this year. Based on this, I will have an analysis made early next year that will map out the possible consequences for the nitrogen approach.

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To facilitate innovation in the medium and long term and to obtain a license with certainty, the government is focusing on two additional tracks: improving the application of innovations in practice and real-time measurement in practice. This month, the House will receive a letter from the State Secretary for Infrastructure and Water Management about improving the Rav system, including its application in practice, in which a policy response is given to the report entitled 'Improving the effectiveness of low-emission housing systems in practice'. It indicates how the Rav system will be tightened. The Chamber will receive a policy response from the Minister of Agriculture, Nature and Food Quality regarding the second track, which will include an explanation of how we will work towards a new system based on target regulations in combination with real-time measurement at company level in the long term. The advice of quartermaster Mr Tijssens is involved in this. This will not lead to new possibilities in the short term, but it will provide clarity and farmers will know which investments fit within the new system of granting permission. The House will also receive this letter this month.

The above letters should therefore be read in conjunction.

Carefulness is important in arriving at decisions about new instruments. That is why the further elaboration will take into account considerations regarding the complexity of system changes, the legal feasibility, the feasibility of this and the period in which this can be realized. It is expected that the new Wnb system will make it easier to grant permission in the long term. In the spring, the government will inform the House about the policy intentions for this new authorization system.

Grazing and fertilizing

When dairy farmers graze their cattle, the nitrogen emissions and deposition caused by their dairy cattle go down compared to the situation when the animals are in stables. This is partly due to the fact that faeces and pee come together less during grazing, resulting in fewer ammonia compounds being formed.

This working method has been confirmed by the Council of State in its ruling of 12 October 2022 on whether a nature permit is required for grazing dairy cattle<sup>33</sup>. This case was brought by nature organizations, because they believe that

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33 ECLI:NL:RVS:2022:2874.

grazing, it cannot be ruled out that nature in Natura 2000 areas will deteriorate. The Council of State considers that it can be assumed that Natura 2000 areas will not deteriorate, provided that it can be demonstrated that the land on which the cows graze has always been fertilised.<sup>34</sup> Initiators must be able to demonstrate this when applying for a permit for new projects where grazing plays a role and competent authorities in the assessment of enforcement requests. They can often fall back on the zoning plan, which states that the land is intended for agricultural use.

Directorate of Administrative and  
Political Affairs

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Nor is a nature permit required for fertilizing if it can be demonstrated that it has always been done. Initiators and competent authorities can therefore also fall back on the zoning plan for this purpose.

This ruling provides clarity to initiators and competent authorities about granting permission in which grazing and fertilization play a role. Together with the competent authorities, I will be working on drawing up a guideline in the near future, so that licensing authorities can apply this line in practice.

It is expected to be ready next spring. With regard to the permit obligation for internal net metering, I will also arrange that initiators for grazing dairy cattle on the basis of the method referred to do not have to apply for a new nature permit.

#### **AERIUS update** Due to

the calculation error of the National Institute for Public Health and the Environment (RIVM) in the top 100 list with the largest ammonia emissions, the planned annual update could not take place on Tuesday 22 November. RIVM is currently repairing all products affected by the error. I think it is important that this is done carefully, so that the new version of AERIUS does not contain this error and that the consent tool can continue to be trusted. For this reason, the update of AERIUS Calculator and Monitor has been postponed to the week of January 24, 2023. In the coming week, all users will be informed about this through the regular channels. The consequences for granting permission in the meantime are also discussed.

#### **In**

**conclusion** The challenges of restoring nature, making companies more sustainable and at the same time ensuring a beautiful and liveable countryside are challenging.

As a government, we ask a lot of the people who live and work there. We do this in the confidence that these people in particular know the importance of a strong nature, resilient soil and healthy living environment. In the coming period, the government wants to enter into discussions with the parties involved in order to properly work out the proposals. With the companies and families involved in the short-term approach, we will have the conversation at the kitchen table or in the company canteen as much as possible.

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<sup>34</sup> Since the moment the area was protected under the Habitats Directive.

We constantly keep an eye on the human dimension and try to meet their wishes as much as possible. In this way we can jointly shape the future in the rural area, we are gradually given more scope to grant permits and entrepreneurs can once again face the future with confidence.

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Christianne van der Wal-Zeggelink  
Minister for Nature and Nitrogen