
Vergaderjaar 2021 – 2022

35 710 Mededeling van de Commissie aan het Europees Parlement, de Raad, het Europees Economisch en Sociaal Comité en het Comité van de Regio's - EU-biodiversiteitsstrategie voor 2030 - De natuur terug in ons leven brengen (COM(2020)380)

F **BRIEF VAN DE COMMISSARIS VAN DE EUROPESE COMMISSIE VOOR MILIEU, OCEANEN EN VISSERIJ**

Aan de voorzitter van de vaste commissie voor Economische Zaken en Klimaat/Landbouw, Natuur en Voedselkwaliteit van de Eerste Kamer der Staten-Generaal

c.c. de Voorzitter van de Eerste Kamer der Staten Generaal

Brussel, 19 november 2021

The Commission would like to thank the members of the standing committee for Economic Affairs and Climate Policy / Agriculture, Nature and Food Quality of the Eerste Kamer der Staten-Generaal for their additional questions in relation to the EU Biodiversity Strategy for 2030 {COM(2020) 380 final}. The Commission would like to refer to the attached annex providing responses to these questions, and looks forward to continuing the political dialogue in the future.

Virginijus Sinkevičius
Commissioner for Environment Oceans and Fisheries

Annex

The Commission has carefully considered the additional questions raised by the members of the parliamentary GreenLeft Alliance (GroenLinks) and is pleased to offer the following clarifications and responses.

1. The members of the parliamentary GreenLeft Alliance would like to know whether the European Commission is aware that the legislative process of the Dutch Environment and Planning Act (Omgevingswet) has already been fully completed, with the exception of the decree regulating its entry into force. And is the Commission aware that the present planning and environmental legislation, including the legislation on environmental impact assessment (EIA), has been transposed into the Environment and Planning Act in a policy-neutral manner? As far as these members can establish, there is therefore no essential difference between the manner in which the EIA directive is currently transposed and the manner in which the Netherlands will deal with this directive under the Environment and Planning Act. If changes have been made, however, the members of the parliamentary GreenLeft Alliance would be grateful to learn from the European Commission why it considers them to be of such a nature as to justify postponing the infringement procedure for at least another year.

The Commission is aware of the planned change to the Dutch legislation that should align it to the EIA Directive. Thus, Article 16.43 of the draft Environment and Planning Act (Omgevingswet) would be compliant with Article 2(1) of the EIA Directive by taking into account all possible 'significant effects' (aanzienlijke milieueffecten) of projects when deciding whether an impact assessment study is necessary.

The Commission is closely following the adoption process of the Environment and Planning Act (Omgevingswet), given that correct implementation of EU law into national law is a precondition for the correct application of EU law on the ground, and will decide accordingly once that Act has entered into force.

2. Would the European Commission please say whether it is of the same opinion as the members of the parliamentary GreenLeft Alliance and, if not, indicate what it considers to be the differences? These members feel it is important for the infringement procedure to be completed quickly because the Dutch government is (a) persisting, on the basis of the present legislation discussed by the Commission, in taking irreversible decisions for projects to which the Commission explicitly refers in the confidential procedure and (b) tolerating activities that require a nature permit under both present and future legislation. They would point out that the corresponding harm caused to the natural environment by nitrogen emissions is simply continuing to increase in this period. The members of the parliamentary GreenLeft Alliance believe that fundamental rights of citizens may be violated as a result of this. For example, the nature permits required for various activities are currently lacking. This applies not only to agricultural activities (PAS sensors) but also to large-scale activities which may involve noise standards being exceeded for hundreds of thousands of people and which are certainly being carried out without valid nature permits. These members

would be grateful to learn whether the European Commission, in view of the above, would be prepared to expedite the infringement procedure as a matter of the utmost priority.

The Commission would like to remark that the pending infringement case (non-conformity case) is strictly limited to the transposition of the EIA Directive itself. It does not therefore have a bearing on issues related to nitrogen emissions as such.

These emissions are typically dealt with under the permitting procedure based on Article 6(3) of the Habitats Directive 92/43/EEC as transposed in the Dutch Nature Protection Act (Wet natuurbescherming). The Commission currently sees no reason to start infringement procedures based on the way the said Article 6(3) is transposed in Dutch legislation. Also, practice shows that the Dutch courts perform well their task of verifying compliance with that provision.
