



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

ENVIRONMENT

Directorate A - Communication, Legal Affairs and Civil Protection

ENV.A.2 - Infringements

The Head of Unit

Brussels, **04 SEP. 2009**
ENV/A2/MV/sb/ARES(2009)226856

Dr. N.M. Gerrits
email: info@incaconsult.eu

Dear Dr Gerrits,

Your letter of 23 August 2009, sent by email, has been received in good order and has retained my attention. In this letter you react to my pre-closure letter of 1st of July 2009 concerning the non-registration of your complaint about the implementation of the Habitats- and Birds directives in the Netherlands.

After studying the material annexed to your letter I remain however of the opinion that you have not raised an issue which points at an infringement by the Netherlands of their European obligations.

European law requires the Netherlands to fulfil their obligations deriving from the Directives. The Netherlands have implemented the Directives and notified the Commission thereof.

The Netherlands are however free to extend the provisions of the Directive to areas or species not covered as such by these Directives. The obvious limit to this is that such an extension must not put the correct fulfilment of the obligations deriving from the directives at risk. I cannot find indications in your letter that this is the case in the Netherlands.

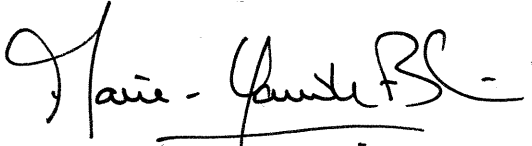
Although one may understand feelings of frustrations of farmers which are confronted with certain restrictions in (further) exploiting their enterprises as a consequence of the policy choices made by the Netherlands, as such the extension is not an infringement. The same is true for adding qualifying elements to designated areas, which may also lead to restrictions for farmers.

You maintain that following the Dutch implementing legislation is not clear or sufficiently precise. I have no reason to believe that the Dutch implementing legislation fails to meet the requirements, bearing in mind that some issues inevitable require interpretation in practice, just like any other generally applicable legal rule.

You also maintain that the implementation by the Netherlands does not allow citizens to exercise their legal rights deriving from the Directives or otherwise hold the Dutch Government accountable for its actions. You do not specify which specific rights are at stake. Despite that, it is clear that the protection of areas and or species designated by law, may affect the exploitation by farmers of their lands.

By way of conclusion, although one understands the challenges for modern day farmers, your letter does not allow me to identify a possible infringement by the Dutch authorities of their obligations under the Habitats or Birds directives. Consequently, I will not be able to open an infringement procedure.

Yours sincerely,

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Julio García Burgués
Head of Unit

CC Mark Marissink (B2) Francois Kremer (B2)