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# The nitrogen problem in the Netherlands

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NAP contact meeting - Tata Steel IJmuiden

Mathilde van Velzen-de Boer

8 June 2023

# Dreun voor het Rijk: technische innovaties die stikstof moeten reduceren werken onvoldoende

**Onderzoek** Wageningen University Apparatuur die de stikstofuitstoot moet reduceren, werkt minder goed dan gedacht. Dat is een dreun voor het stikstofbeleid en creëert onrust onder boeren.

✎ Martin Kuiper • 11 mei 2023 • Leestijd 2 minuten

NIEUWS

## Kabinet geeft vergunningloze veehouders voorrang bij verdelen stikstofruimte

**“Stikstofprobleem is wake-up call: actie is nu nodig!”**

**Greenpeace: binnen twee weken stikstofmaatregelen, anders rechtszaak tegen overheid**

**fd.** Het Financieele Dagblad

## Ministerie verwacht zeven keer zoveel stikstofvervuilers te moeten aanpakken

NOS Nieuws • Woensdag 2 november 2022, 10:21 • Aangepast woensdag 2 november 2022, 10:56

**Rechter haalt streep door bouwvrijstelling, grote gevolgen voor projecten**

LTO wil oplossing minister Van der Wal

## Boeren verstrikt in stikstofdoolhof

NOS Nieuws • Woensdag 29 mei 2019, 12:55

**Raad van State: Nederlandse aanpak stikstof deugt niet**

DAGBLAD met NOORDEN

4 web

D66 wil veestapel halveren: 'Dom, onprofessioneel. Dit is een blunder'

ANALYSE

**Stikstofimpasse compleet: provincies zitten juridisch klem, boeren zonder vergunning in onzekerheid**

## Nature 2000-areas

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- 162 Nature 2000 areas are protected on the basis of the European Habitats Directive and the Birds Directive
- The majority are nitrogen-sensitive
- By 2030, at least 50% of the acreage of the nitrogen-sensitive habitats must be below the critical deposition value



# Obligations under the Habitats Directive

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## Article 6 of the Habitats Directive

1. Member States shall establish the necessary conservation measures (...);
2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species (...);
3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives (...) the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned;
4. If, in spite of a negative assessment (...) and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary (...).

# Nature Conservation Act

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## **Article 2.7 of the Nature Conservation Act**

'without a permit from the provincial authority, the realisation of a project that is not directly connected with or necessary to the management of a Natura 2000 area, but is likely to have a significant effect thereon, either individually or in combination with other plans or projects, is prohibited'

## **Article 2.8 of the Nature Conservation Act**

- Appropriate assessment for situation of Article 2.7 of the Nature Conservation Act;
  - Establishment of a plan or granting of a permit for a project is permissible only if the appropriate assessment shows that natural features of the site will not be harmed.
  - AIC test
- 



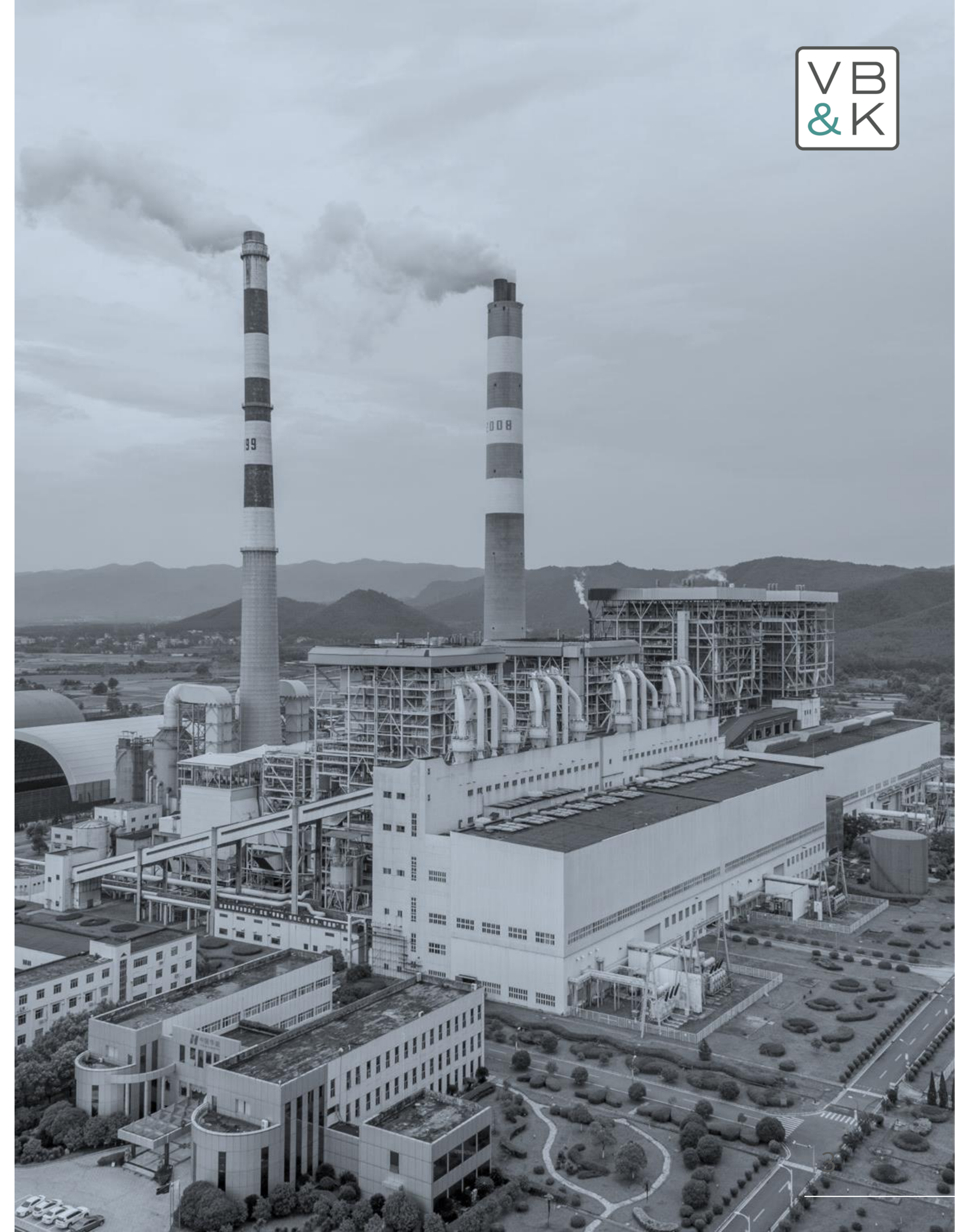
## Internal netting

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- Changes to or expansion of an existing project at the same location, with no increase in nitrogen deposition in relation to the reference situation (the permitted situation)
- Permit-free according to a decision of the Administrative Jurisdiction Department 'based on objective data it is out of the question that change/expansion will have significant consequences'

ABRvS 20 January 2021, ECLI:NL:RVS:2021:71  
(Logtsebaan)

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## Complications of internal netting

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- No legal certainty for the operator, third-party stakeholders or the government in the event of changes;
- No possibility of pursuing a policy on limiting internal netting possibilities (creaming off any residual nitrogen emission allowance);
- Reintroduction of permit obligation has been announced in draft Bill of February 2023



## Points for attention for internal netting

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- The principle is a valid nature conservation permit:
  - Irrevocable PAS permit (ECLI:NL:RBNNE:2022:891)
  - (PAS) permit for which the realisation term has expired (ECLI:NL:RBNNE:2022:146);
  - Permit referring to Ammonia and Livestock Farming Regulation (RAV) codes, provided that the change does not lead to stabling systems with other RAV codes (see, *inter alia*, ECLI:NL:RBZWB:2022:665; ECLI:NL:RBOBR:2022:1323 and 569);
  - Permission granted before the European reference date, in so far as this continues after that date;
  - Permit under the Nature Conservation Act.
- The determining factor is the permitted situation, not the actual situation

# External netting

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- Prevention of increase in effects on Nature 2000 areas through new initiative, by partial/full discontinuation of nitrogen-generating activities at another location
- An appropriate assessment and a permit under the Nature Conservation Act are always necessary
- Provincial policy rules apply: 30% creamed off for nature conservation



# Points for attention and complications with external netting

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- Technically complex: effects on the same hexagons
- Direct relationship between the party adding to the balance and the recipient
- The actual situation is leading (provincial policy) + 30% is taken off for nature restoration
- Measure that, by its nature is also suitable as a conservation or appropriate measure PAS decision  
ECLI:NL:RVS:2019:1603 and Administrative Jurisdiction Department of the Council of State, 24 November 2021 ECLI:NL:RVS:2021:2627 (Area Development Oostelijke Langstraat), *TBR* 2022/30
- Very strict requirements: comparison of increase and decrease in deposition is not sufficient. See also District Court of Limburg, 19 and 20 May 2021, ECLI:NL:RBLIM:2021:4127 and ECLI:NL:RBLIM:2021:4198
- Can only be deployed as a mitigating measure if sufficient other measures to prevent deterioration remain ('additionality requirement'). ECLI:NL:RVS:2021:2627
- Substantiation is lacking at present and will be included in provincial area plans (mid-2023). In the meantime, external netting has been halted in several provinces.

# What is still to come?

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# Legislation

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## ***Draft Bill amending environmental values for nitrogen deposition in 2030 and permit obligation for internal netting***

1. Acceleration of statutory nitrogen targets (74% 'healthy' by 2030 instead of 50%)
2. Permit obligation for internal netting
3. Permit obligation for residual allowance

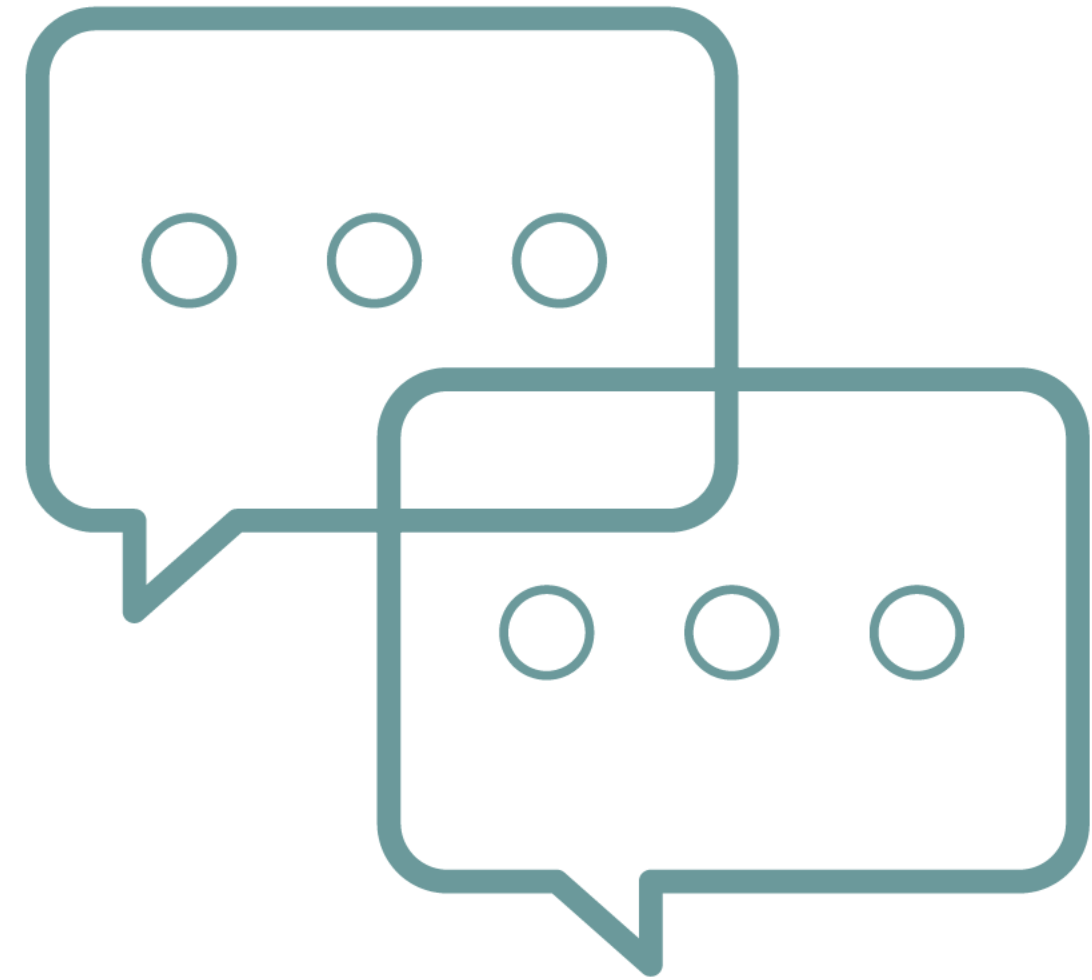
## ***Environment and Planning Act (Omgevingswet) from 1 January 2024***

- Policy-neutral transition from Nature Conservation Act to Environment and Planning Act
- 'hidden picture puzzle' for relevant legislation
- Permits prepared via Article 3.4 of the General Administrative Law Act
- Integrated Approach to Nitrogen Programme at national level also possible locally (Article 4.29 Quality of the Living Environment Decree)
- Environmental values/objectives in environmental plans, including in the field of nature conservation
- Expanded duty of care

## National Programme for Rural Areas

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- Combined, area-based approach to water, nature/nitrogen and climate
- Environmental value 2030 to new leading area objectives
- Offers structuring choices and regional objectives that provincial authorities use in order to draw up area programmes
- July 2023 establishment of final area objectives and area programmes



# Vragen?

19-04-2022

**Licht op Legal**

met Mathilde van Velzen - de Boer

Licht op Legal: Natuur en Stikstof:  
Wat zijn de laatste  
ontwikkelingen?

20-10-2020

**Licht op Legal**

met Mathilde van Velzen - de Boer

Licht op Legal: Spoedwet aanpak  
stikstof: Wat betekent dit voor u?



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