

## **EEB response to the public consultation on the evaluation of the Nitrates Directive**

### **Summary**

Intensification of agriculture, largely driven by unsustainable inputs of fertiliser, has resulted in widespread nutrient pollution across Europe with detrimental effects on biodiversity and human health.

The Nitrates Directive, which is a well-established EU Directive as well as part of the basic measures requirements under the Water Framework Directive, plays an important role in reaching sustainable nutrient flows, by setting rules for agricultural practices to limit the loss of nutrients to water, including limiting livestock intensity.

Unfortunately, implementation and enforcement of the Nitrates Directive, as well as many other environmental Directives, is far from satisfactory and, instead of directing measures to the root causes of pollution, derogations have been granted to the most livestock-intense countries and regions.

A transformation of the agricultural system, away from linear and extractive agriculture, to agroecological and mixed farming practices, combined with a move to more plant-rich, sustainable diets, is urgently needed to ensure that the environmental objectives of the Water Framework Directive are met by 2027 and have several co-benefits, including reducing emissions to air.

The Nitrates Directive is fit for purpose and should be maintained, but implementation, reporting and enforcement should be strengthened in line with recommendations from the European Court of Auditors. A recast would hamper the impactful implementation which should be the main priority backed by political will and sufficient resources.

### **Therefore, the EEB recommends the European Commission to do the following:**

1. Retain the Nitrates Directive without recast, and step up impactful implementation and enforcement of the Nitrates Directive and the Water Framework Directive
2. Develop an Integrated Nutrient Management Action Plan to set out the path for how the EU should meet its already agreed targets to cut nutrient losses in half by 2030
3. Do not greenlight any further derogations from the Nitrates Directive
4. Follow up on data gaps in Member States' reporting
5. Streamline water protection objectives into agricultural policies to ensure coherence

## Need to address nutrient pollution and its root causes

Data from the latest Nitrates Directive implementation report show that more than 30% of surface waters, 14% of groundwater and 80% of marine waters in the EU are negatively affected by excess nutrients.<sup>1</sup> Nutrient pollution is also one of the main causes for failure of good status under the Water Framework Directive.<sup>2</sup> And this comes to a cost to tax payers of 22 billion euros yearly in the form of e.g. cost for drinking water treatment.<sup>3</sup>

Additionally, the EU's agricultural system, propped up by imports of feed and fertilisers, has locked the Union and its farmers into an unhealthy dependency on Russia, currently the EU's largest source of fertilisers. This keeps conventional farmers exposed to volatile fertiliser prices, which was seen in 2022 when gas and fertiliser prices spiked. Unfortunately, the response from the European Commission was not to address the root causes, but to grant generous support to the fertiliser industry<sup>4</sup> that made record profit from the crisis.

Europe is now beyond the safe operating space for nutrients,<sup>5</sup> largely driven by modern agriculture that has focused on intensification and specialisation, to the detriment of the biodiversity and human health. At the heart of this stand livestock production, which is responsible for more than 80% of nutrient pollution of water,<sup>6</sup> and claims the majority of agricultural land in Europe for the production of animal feed. Areas with high livestock densities are hot spots for nitrate pollution, e.g. the Netherlands, Flanders (Belgium), Catalunya, Bretagne and the Po valley.

The extensive presence of karst areas across Europe – estimated to cover a fifth of EU surface – makes the region vulnerable as the geological formation allows water to travel swiftly through conduits and fractures without significant filtration meaning that nitrates from fertilisers, manure, or other sources can directly contaminate groundwater and surface water bodies.

In addition, 60-70 % of European soils are degraded, undermining the vital function of healthy soil ecosystems and sustainable soil management in mitigating water pollution.

Without addressing these issues, we risk continued biodiversity decline, a high societal cost due to nitrate exposure in drinking water<sup>7</sup>, as well as increased vulnerability to water scarcity. Scientists are warning for a triple increase in global river basins that face water scarcity due to nitrogen pollution by 2050.<sup>8</sup>

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<sup>1</sup> European Commission, (2021), [Report on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2016–2019](#) (European Commission, (2021), Nitrates Directive implementation report)

<sup>2</sup> EEA 2018 Report No 7/2018 [European waters: Assessment of status and pressures 2018](#)

<sup>3</sup> European Commission and IEEP, (2021), [Green taxation and other economic instruments: Internalising environmental costs to make the polluter pay](#)

<sup>4</sup> EEB press release, 9 November 2022, [Commission bends over backwards for the fertiliser industry](#)

<sup>5</sup> EEA (2020) [Is Europe living within the limits of our planet? An assessment of Europe's environmental footprints in relation to planetary boundaries](#)

<sup>6</sup> Westhoek H. et al. (2015) Nitrogen on the Table: The influence of food choices on nitrogen emissions and the European environment. (European Nitrogen Assessment Special Report on Nitrogen and Food.) Centre for Ecology & Hydrology, Edinburgh, UK.

<sup>7</sup> University of Copenhagen, 6 November 2023, We can save lives and millions with less nitrate in drinking water [https://news.ku.dk/all\\_news/2023/11/we-can-save-lives-and-millions-with-less-nitrate-in-drinking-water/](https://news.ku.dk/all_news/2023/11/we-can-save-lives-and-millions-with-less-nitrate-in-drinking-water/)

<sup>8</sup> Wang, M., Bodirsky, B.L., Rijneveld, R. et al. A triple increase in global river basins with water scarcity due to future pollution. Nat Commun 15, 880 (2024). <https://doi.org/10.1038/s41467-024-44947-3>

By setting rules on the application of fertilisers, the Nitrates Directive is a crucial tool to prevent nutrient pollution from agriculture and to achieve objectives of cornerstone legislation, such as the Habitats Directive, the Water Framework Directive, and the Marine Strategy Framework Directive, as well as objectives of the Green Deal to cut nutrient losses by at least 50% by 2030 (as set under Biodiversity and Farm to Fork strategies). The Commission has announced that it will present in 2023 an Integrated Nutrient Management Action Plan to set the path for how the EU should meet the Green Deal objectives, but the plan has failed to materialise and the EC should publish it without delay.

The WFD has recently undergone a fitness check evaluation and was deemed fit for purpose, but lack of implementation and coherence with other sectoral policies were highlighted as a hurdle to success. With the 2027 deadline for Member States to (finally) comply with WFD objectives approaching, it is of paramount importance that basic measures, which include measures under the Nitrates Directive, are fully implemented and overuse of derogations and exemptions is curtailed.

### **Implementation and enforcement**

The Commission reports that improvement of nitrate pollution has stalled in the past decade.<sup>9</sup> At the same time, due to lack of data from Member States, as well as differences in methodologies to define eutrophication, the Commission could not assess if eutrophication of surface waters have improved or worsened since the previous reporting period. The European Court of Auditors has also noted that up to 13 Member States did not present data on key indicators, such as livestock numbers, manure and mineral fertiliser use, nutrient balances and nitrogen discharges in their 2016-2019 implementation reports.<sup>10</sup>

Despite the slow progress on implementation, in the last ten years, the Commission only launched three new infringements, while several previously launched cases were closed, despite ongoing issues with nitrates pollution. For instance, an infringement on Art.5 measures against Germany was closed in 2023, after a CJEU ruling in 2018. Yet, in November 2023, a German court ordered two Länder to draw up a programme of measures that is adequate to reach the 50 mg/l threshold.

The lack of adequate enforcement action has hindered the full potential of the Directive from being realised and undermined the protection of the rule of law. It has further negatively influenced the achievement of the targets of the Water Framework Directive, with most Member States not being on track to meet the final 2027 deadline. The impact of the Nitrates Directive would be significantly increased through proper enforcement action by the Commission, which has also been called for by the European Parliament<sup>11</sup>.

Instead, during the last implementation cycle (2016-2019), the Commission granted derogations to six Member States: Belgium (Flanders), Denmark, Ireland, Italy (Lombardia and Piemonte), the Netherlands and the UK (England, Scotland, Wales and Northern Ireland).<sup>12</sup> In 2024 and 2025, the three derogations

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<sup>9</sup> European Commission, (2021), Nitrates Directive implementation report

<sup>10</sup> European Court of Auditors, Special report 19/2023: EU efforts for sustainable soil management

<sup>11</sup> European Parliament resolution of 5 April 2022 on measures against water pollution caused by nitrates, including improvements in the different nitrate measuring systems in Member States (2021/3003(RSP))

<sup>12</sup> European Commission, (2021), Nitrates Directive implementation report p. 9

that are still in place (Denmark, the Netherlands and Ireland), are coming to an end and these countries too, will need to limit the application of manure to the legal threshold of 170 kg N/ha.

This has already been reflected in changes in Dutch agricultural policy, which has put in place urgent limits to cattle farming. Even though livestock numbers will need to be reduced in order to meet the environmental objectives, the delays and poor implementation of the Nitrates Directive have contributed to the fact that drastic measures in the Netherlands were needed, including permit stops and emergency bans. Those could have been avoided if the Nitrates Directive had been properly implemented and enforced from the start. A recast of the Directive, on the other hand, would lead to further delays in the implementation, an even increased perception of impunity for major implementation failures and risk more drastic measures, including permit stops, in the future,

### **Way forward**

Freshwater is essential for nature, economy and society, but it is a limited resource. Climate change manifests itself through the water cycle, and the impacts are already seen across Europe. In this moment, it is ever more crucial that protection of natural waters remain a priority.

The EEB envisions a food and farming system that rewards farmers with decent and fair pay whilst protecting Europe's natural ecosystems to ensure long-term food security and farmer livelihoods. This requires a transition away from extractive and linear agriculture to agroecological and mixed farming practices that combines extensive livestock, crops for nutrient cycling and sustainable soil management practices. Such a shift can bring huge benefits for society, farmers and the environment, and is backed up by science.

A more sustainable nutrient management also provide a way towards strategic autonomy. However, this needs to be done in an ecologically sound way that does not serve as a lock-in or incentive to keep unsustainable practices, such as intensive farming of animals. The proposal<sup>13</sup> from the Netherlands, Italy and Denmark to revise the Nitrate Directive to allow the application of RENURE products above the 170 kg threshold, while framed as a means to substitute synthetic or mineral fertiliser, in practice would allow continued unsustainable high numbers of livestock.

On the other hand, land use practices such as crop rotation, cover cropping and reduced tillage enhance soil's natural filtering capacity and its ability to retain nutrients, thus diminishing nutrient runoff into water bodies and decreasing reliance on fertilisers. The Nitrates Directive sets basic minimal requirements for such agricultural practices in Annex II and these should be fully implemented and enforced in order to reach the objectives of the Water Framework Directive by 2027 and any attempts to circumvent or water down the rules must be avoided.

The measures under the Nitrates Directive should be complemented with mandatory sustainable soil management principles via the Soil Monitoring Law (subject to final adoption) to fully harness the potential of healthy soil ecosystems and the links between sustainable soil management and water protection. Additionally, the Commission should deliver the Integrated Nutrient Management Action

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<sup>13</sup> Note from the Netherlands delegation, supported by the Danish and Italian delegations the Council (Agriculture and Fisheries) on 23 January 2024 <https://data.consilium.europa.eu/doc/document/ST-5502-2024-INIT/en/pdf>

Plan and follow the findings<sup>14</sup> from its own research service that a shift in diets and towards agroecology is needed to get the EU back to sustainable nutrient flows.

### **Recommendations for the European Commission**

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<sup>14</sup> European Commission, Joint Research Centre, Grizzetti, B., Vigiak, O., Aguilera, E. et al., Knowledge for Integrated Nutrient Management Action Plan (INMAP), Publications Office of the European Union, 2023, <https://data.europa.eu/doi/10.2760/692320>