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The EU Commission
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BELGIEN

Complaint against violation of the Community Habitats Directive, Water Framework Directive, EIA Directive and Nitrates Directive in Denmark's new livestock act

The Danish Society for Nature Conservation (DN) hereby lodges a complaint about the livestock act adopted by the Danish Parliament on February 23, 2017, because the act, as we understand it, violates the following 4 EU-commitments to which Denmark has acceded:

- Council Directive 92/43 / EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (The Habitats Directive),
- Directive 2011/92 / EU of the European Parliament and of the Council of 13 December 2011, as last amended by Council Directive 2014/52 / EU of 16 April 2014 (The EIA Directive),
- Directive 2000/60 / EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community water policy measures (Water Framework Directive) and
- Council Directive 91/676 / EEC of 12 December 1991, as last amended by Regulation No 1882/2003 / EC of 29 September 2003, as last amended by Regulation (EC) No. 1137/2008 of 22 October 2008 (The Nitrates Directive).

Introduction

On February 23, 2017, the Danish Parliament adopted bill No. L 114 (Livestock Farming Act). The Act regulates animal husbandry and implements a number of Community environmental directives, including parts of the above 4 directives. The act came into force on August 1, 2017.

./ Bill No. L 114 is attached.

The act introduced a fundamental new model for environmental regulation of livestock farming in Denmark. The model involves, among other things that the Danish environmental authorities only have to assess and make necessary environmental requirements for the livestock plant (stables, slurry containers, etc.). Contrary to earlier, environmental authorities no longer need to assess the areas required for livestock farming, as the nature and environmental considerations in a livestock area are regulated by the act already.

It is DN's impression that such a model for environmental regulation of livestock farming is possible without violating obligations in the community's environmental directives. But since livestock manure is directly linked to livestock farming, there are a number of prerequisites that must be met for the model to be implemented without compromising these obligations.

DN believes that the model must meet the following 4 assumptions:

- 1) The regulatory model shall ensure that livestock breeds do not damage a Natura 2000 area and have a system of strict protection for species listed in Annex IV to The habitats Directive.

In particular, DN wants to refer to Article 6 and Article 12 of the Habitats Directive.

Article 6 states, among other things, that projects that are unrelated to or necessary for the management of the site but which in themselves or in connection with other plans and projects may affect such a site, must be assessed in terms of their impact on the site taking into account the conservation objectives for this. Based on the conclusions, the competent national authorities will only give their approval to the project once they have been assured that it does not damage the integrity of the site.

Article 12 states, among other things, that necessary measures must be taken to introduce a strict protection regime in the natural range of the species listed in Annex IV of the Directive (Annex IV species), with a ban on deterioration or destruction breeding sites and resting places for these species.

- 2) The regulatory model must include all relevant selection criteria in Annex III of the EIA Directive by setting thresholds or criteria for when a livestock farm is not to be specifically assessed.

DN wants to draw attention to Article 4 of the EIA Directive in particular. Among other things, the article says that Member States may set thresholds or criteria for when it is not necessary to submit projects either in accordance with the article or an environmental impact assessment. It is also clear from the article that when setting thresholds or criteria, the relevant selection criteria in Annex III of the Directive must be taken into account.

- 3) If the regulatory model entails increased nitrogen emissions from agriculture, measures must be taken to reduce it, cf. the Nitrate Directive.

DN in particular refers to Article 1 of the Nitrates Directive. Among other things, it is apparent that the directive aims at reducing water pollution caused or induced by nitrates from agricultural sources and to prevent further pollution of this kind.

- 4) The regulatory model shall not override the regulatory measures put in place to reduce the deterioration of surface waters and groundwater bodies, cf. the Water Framework Directive.

DN in particular refers to Article 4 of the Water Framework Directive. It states that the Member States must protect, improve and restore all surface waters and prevent deterioration of all groundwater bodies.

DN does not believe that the act, as the Danish parliament has adopted it, complies with these assumptions.

Accordingly, DN believes that the Act does not eliminate, based on objective and scientific criteria, that the spreading of livestock manure from livestock farms can have a significant effect on Natura 2000 sites and can cause deterioration or destruction of breeding sites and resting places for Annex IV species.

DN also believes that the act does not eliminate any significant impact on nature and the environment in general. This is due to the fact that the threshold criteria for when a livestock farm is not to be assessed in concrete terms do not include all relevant criteria in Annex III of the EIA Directive.

As the act, as mentioned above, excludes a concrete assessment of livestock farming areas, it thus overrides the obligations for assessment and consideration of the necessary requirements for livestock farms due to their environmental impact, as set out in the Habitats Directive and following the EIA Directive.

Furthermore, DN believes that the act does not eliminate any deterioration of water resources, neither does it eliminate increased nitrogen emissions from livestock farming. Since no other initiatives have been taken to safeguard against increased water pollution from nitrates from agriculture to surface waters and to groundwater resources, the Act violates some of the obligations arising from the Nitrates Directive and the Water Framework Directive.

Below are details of circumstances where the act does not comply with the directives.

Phosphorus

The act has introduced a ceiling for how much phosphorus can be applied on the fields - a phosphorus ceiling.

There are already many fields in Denmark today, where phosphorus accumulation is very high as a consequence of the previous phosphorus application of livestock manure and where a phosphorus discharge to the aquatic environment occurs.

With the adoption of the act, the requirements for the maximum application of phosphorus is relaxed. Already, the current requirements for the maximum application of phosphorus lead to an accumulation of phosphorus. Thus, the relaxation of the act results in an additional increased phosphorus accumulation in the soil, and thus an additional increased phosphorus discharge to the aquatic environment, or a significantly increased risk thereof.

The act states that the intention is to reduce the phosphorus ceilings in 2018 for certain types of livestock. However, it is only the intention that this smaller intensification of the phosphorus ceiling should occur in catchment areas around large, targeted lakes, and only if the lakes change status, cf. Water Framework Directive because of increased phosphorus emissions to them. It is not indicated on what basis, the level of the smaller intensification of the phosphorus ceiling will be determined in relation to environmental impact. See page 95 of the attached Bill No. L 114.

A memorandum from the University of Aarhus has been prepared for the purpose of establishing the phosphorus ceiling of the Act. In the memorandum calculations have been made on the environmental impact of the act's phosphorus ceiling, and the above mentioned intention to increase the ceiling in certain areas and under certain conditions.

- ./ The memorandum from the University of Aarhus is attached (Ændret husdyrregulering: Effekter af loft for tilførsel af fosfor med husdyrgødning, opdateret notat med reviderede fosforloft af 5. september 2016).

The memorandum's calculations of the environmental impact of the tightening of the phosphorus ceiling, which it intends to implement in relation to targeted lakes, comprises 548 lakes.

However, there are about 850 targeted lakes in Denmark. The memorandum's computation of the environmental impact thus involves far from all targeted lakes. Nevertheless, the memorandum is based on the consideration of the environmental impact of a slight tightening of the phosphorus ceiling in certain areas on which the act is based.

The act thus permits further phosphorus accumulation in all catchment areas to phosphorus sensitive natural areas. This applies to further phosphorus accumulation in catchment areas for both phosphorus sensitive habitats and other phosphorus sensitive lakes and marine waters. Moreover, the act does not rule out that this accumulation of phosphorus can take place regardless of the amount of already accumulated phosphorus in these catchment areas.

It has been suggested that the intention is to adapt the phosphorus ceiling until 2025. As far as DN can see, it should be done on the basis of an upcoming survey of the need for further measures. It is not indicated how this survey will meet the requirements needed in order to adapt the phosphorous ceiling.

Thus, the phosphorus ceiling does not eliminate the approval of livestock farms, which could damage Natura 2000 sites, or deteriorate or destruct breeding sites and resting places for An-

nex IV species. Moreover, the act does not guarantee against an increased risk of deterioration of lakes and marine waters, and, as mentioned, does not require a concrete assessment.

Phosphorus emissions are an important factor for the environmental condition in a large proportion of Danish lakes and marine waters. Increased phosphorus emissions could have significant negative environmental impacts on them.

In Denmark there are about 170,000 registered and protected lakes. Like the coastal marine environment, they are covered by Annex III of the EIA Directive.

Many of the Danish lakes and marine aquatic environments are Natura 2000 sites, as well as being breeding sites or resting places for Annex IV species. Thus, these are also covered by the Habitats Directive.

In connection with the legislative process of the Act in the Danish Parliaments, the lack of attention by the Act in respect to phosphorus-sensitive water areas is explained by the fact that there is no mapping of catchment areas to phosphorus sensitive waters.

./ It appears, inter alia, in the attached reply from the Minister for the Environment and Food (Miljø- og fødevareministerens svar på spørgsmål nr. 39 til L 114 af 30. Januar 2017).

DN agrees that there is no country wide mapping of catchment areas to phosphorus-sensitive water areas, this regards catchment areas for registered and protected lakes too.

DN believes that a lack of environmental considerations with reference to the fact that there is no mapping cannot be used as an argument for not taking environmental considerations when a concrete assessment is simultaneously excluded.

With reference to the directives on using best available knowledge, it should be emphasized that there is both technical and scientific knowledge available to identify land based phosphorus sensitive water bodies and to assess the environmental impact of livestock farming with phosphorus in concrete terms.

Against this background, DN believes that the regulation of phosphorus in the act violates the Habitats Directive, the EIA Directive and the Water Framework Directive.

Thus, the act does not prevent that livestock farming itself or cumulatively can have a significant negative impact on nature and the environment with phosphorus. And no initiatives have been taken to protect phosphorus sensitive lakes and marine waters.

Nitrogen - groundwater

The act eases the previous requirements regarding stocking rate, making it possible to apply up to 170 kg N per. ha (while Denmark still has derogation for cattle under the Nitrates Directive). It is a relaxation which will increase nitrate emissions to groundwater compared to the current nitrate discharges into groundwater from livestock manure. This includes groundwater used as drinking water.

It is apparent from the remarks to the Act that it is not possible to assess the consequences of changes in nitrate discharges to groundwater and to drinking water, including the consequences for human health, cf. also the Drinking Water Directive and Annex III of the EIA Directive. It is thus recognized by the act's adoption that the act will lead to increased nitrate emissions to groundwater, including groundwater used for drinking water. See page 94 of the attached Bill No. L 114.

The remarks to the Act refer to the fact that increased nitrate discharges to groundwater and drinking water must be handled through municipal action plans for drinking water protection. See page 94 of the attached Bill No. L 114.

DN is of the opinion that it is inconsistent with the directive obligations to allow increased nitrate discharges to groundwater with reference to the fact that in the long term action will be taken to limit this increased nitrate emissions, which the act entails.

In addition, DN wants to draw attention to the fact that the above mentioned municipal action plans only address the nitrate sensitive catchment areas used for general drinking water supply and only in areas designated in Denmark as areas with special drinking water interests.

But there are many other drinking water supplies in Denmark than those that will be covered by municipal action plans. These drinking water supplies may experience increased nitrate emissions as a result of the act and without any initiatives to prevent this additional nitrate pollution for these drinking water supplies.

This applies, for example, to the approximately 70,000 private drinking water wells in Denmark, which supply about 400,000 people with drinking water. Measurements in these private wells show a very high nitrate content in many of them. In 2012, about 68,000 people receiving their drinking water from wells with nitrate concentrations above the 50 mg / l limit. 150,000 people were exposed to nitrate concentrations in their drinking water of more than 25 mg / l.

./ It appears in the attached reply of the Minister of Health and Elderly (Sundheds- og ældreministerens svar af 7. November 2016 på spm. 53 (alm.del) til Folketingets Miljø- og Fødevarerudvalg).

The act thus allows the introduction of livestock manure, which can lead to the nitrate content in drinking water wells exceeding the nitrate limit - or even increase the nitrate content in wells where the limit has already been exceeded.

Against this background, DN believes that the act is in violation of the Nitrates Directive and the Water Framework Directive, as it allows increased nitrate emissions to groundwater caused by the spreading of livestock manure without taking the necessary measures to counteract the increased nitrate emissions in general.

DN also believes that the regulation of nitrate discharges to groundwater is in violation of the EIA Directive, because a significant increase in nitrate emissions to groundwater from livestock can happen without this being assessed.

Thus, the act does not prevent that livestock farming itself or cumulatively may have a significant adverse effect on groundwater and on drinking water with nitrate.

DN wants to draw attention to the fact that the Act has launched an additional catch crop supplement. These catch crops must counteract increased nitrogen emissions as a result of the easing of the act. However, the catch crops are targeted exclusively to protect marine waters. They are not targeted at protection of groundwater or of drinking water.

Nitrogen - surface water

With the act, the stocking rate requirements, as previously mentioned, have been relaxed, making it possible to apply up to 170 kg N / ha. This will lead to increased nitrogen leaching to surface waters. The above mentioned catch crop requirement on livestock farms must counter the increased nitrogen discharge to the surface habitats.

It is indicated that the catch crops will be distributed so that nitrogen emissions will increase in some water bodies and fall in other water bodies. See page 94 of the attached Bil No. L 114.

It has also been stated that the act's reorganization of nitrogen emissions to surface waters in general will comply with the Habitats Directive.

./ It appears in the attached reply from the Minister for the Environment and Food (Miljø- og fødevareministerens svar af 7. Februar 2017 på spørgsmål nr. 64 til L 114)

Against this background, DN believes that the regulation of nitrogen emissions to surface waters is in violation of the Habitats Directive and the EIA Directive.

Thus, the act does not prevent livestock farming in itself or cumulatively can significantly affect a Natura 2000 area negatively.

Nor does the act prevent livestock farming itself or cumulatively may have a significant adverse effect on surface waters, cf. the EIA Directive.

Against this background, DN believes that the act is in violation of the Nitrates Directive and the Water Framework Directive, as it allows increased nitrate emissions to surface waters caused by livestock manure and no initiatives have been taken to prevent this increased discharge.

Moreover, DN wishes to emphasize that it is unclear how much nitrogen leaching is increased to the waters where the act's reduced stocking rate requirements, despite catch crops, will lead to increased nitrogen emissions.

Nitrogen (ammonia) - nature

The act introduces a general requirement for livestock manure near a number of nutrient poor natural areas.

The requirement is meant to counteract nutrient deposits from ammonia on these areas in connection with slurry application. It is a requirement that in buffer strips around the natural area more specific techniques of application must be applied, which reduce the ammonia load. DN finds that the requirement for buffer zones essentially is a way to ensure that the nature areas covered by the requirement are not significantly affected.

However, the act far from imposes a requirement for buffer zones for all nutrient poor natural areas. Thus, only nutrient poor habitat areas in Natura 2000 areas as well as raised bogs and lobelia lakes are subject to the requirement.

No other nutrient poor natural areas are covered by the buffer strip requirement, or by any other regulation, which ensures that they are not significantly affected by ammonia through manure application.

There are many Danish nutrient poor natural areas that are not habitat nature. Many of these natural areas are being breeding sites or resting places for Annex IV species.

Already through the previous stocking rate requirements, these natural areas could be overburdened by ammonia through slurry application. With the easing of the act, the ammonia deposits to these natural areas can increase even more.

The omission in the act of buffer strip requirements regarding these natural areas thus means that many of them may be significantly negatively affected. And the lack of regulation does not prevent that nature areas, which are being breeding sites or resting places for Annex IV species may deteriorate or destructed.

This particularly concerns the nutrient poor Danish natural areas such as heaths, commons, bogs and ancient forests, which are not covered by the act in line with, for example, nutrient poor habitat areas. Despite the fact that the above mentioned areas are just as sensitive as the designated nutrient poor habitats.

According to a memorandum from the University of Aarhus nutrient poor natural areas, that are not covered by the buffer strip requirement of the Act comprise in total about 155,000 hectares. In addition, there is an unknown area with ancient forests.

./ The memorandum from the University of Aarhus is attached (Beregning af arealer med beskyttet natur i relation til husdyrregulering af 10. september 2015).

On this basis, it is DN's view that the act's regulation of ammonia on application is in violation of both the Habitats Directive and the EIA Directive.

Thus, the act does not prevent that livestock farming itself or cumulatively may have a significant adverse effect on nature with ammonia through application.

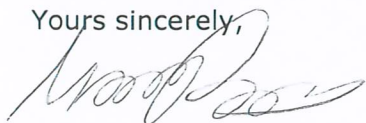
DN's call to the EU Commission

In light of the above, DN calls on the Commission to order the Danish Government to implement amendments to the livestock act adopted by the Danish Parliament on February 23, 2017 to ensure that the act does not violate the obligations that Denmark has agreed with Habitats Directive, EIA Directive, Water Framework Directive and the Nitrates Directive.

DN also calls on the Commission to ask the Danish Government's to substantiate to the Commission and to the Danish public that the necessary amendments to the Animal Husbandry Act and/or other necessary initiatives have been implemented to ensure that these Directives are not violated.

DN would like to clarify and elaborate on this complaint to the Commission at a meeting, at your convenience.

Yours sincerely,



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A copy of this letter has been sent to:

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