

**Voluntary Report** – Voluntary - Public Distribution

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**Report Name:** Flemish Permit Dispute Council Barn Permit Rejection  
Denounces Flemish Nitrogen Emission Program Gap

**Country:** Belgium

**Post:** Brussels USEU

**Report Category:** Agriculture in the News

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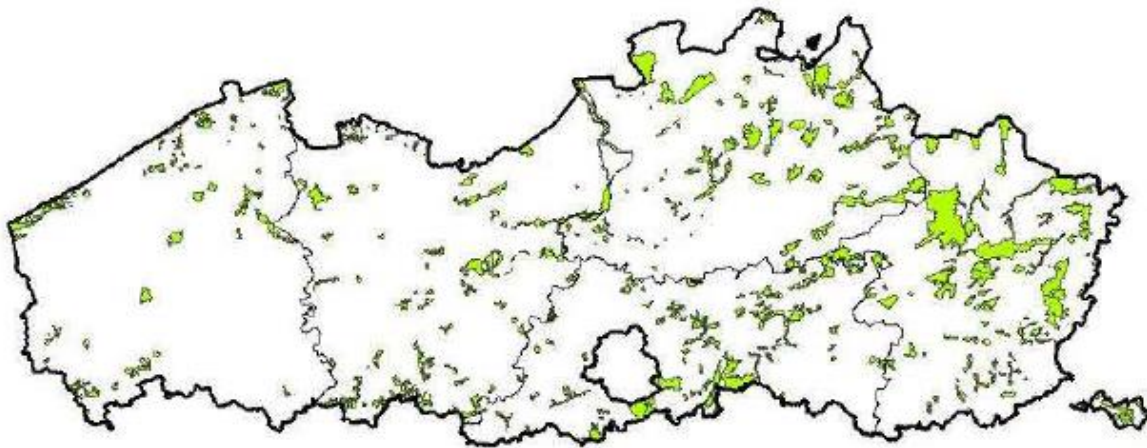
**Approved By:** Lisa Allen

**Report Highlights:**

On Thursday, February 25, 2021, the Flemish Council for Permit Disputes (RvVB) faulted the Flemish nitrogen emission control program (PAS in Dutch), rejecting a demand for a new poultry barn permit in the vicinity of a Habitat 2000 natural area. This administrative court ruled that this temporary Flemish PAS fails to shield natural areas protected by the 1992 Habitat Directive from excessive nitrogen depositions, most of which come from animal production. Two environmental NGOs introduced the legal complaints that led to this potentially far-reaching verdict. The Flemish government vows to expedite the approval of a final PAS, as Flemish politicians fear that this precedent could undermine major investment projects in nitrogen-emitting sectors beyond agriculture, such as industry, transportation, and construction, similar to what happened in The Netherlands after a comparable verdict in May 2019.

On Thursday, February 25, 2021, the Flemish Council for Permit Disputes ( in Dutch 'Raad voor Vergunningsbetwistingen' – RvVB) [overturned an environmental permit](#) for a new poultry barn on a farm in Kortesseem in the Belgian province of Limburg. The Flemish Minister for Environment and Agriculture had granted the permit on August 30, 2020, but two environmental non-governmental organizations (NGOs) appealed the decision leading to the verdict because of the farm's proximity to an area protected by the 1992 [European Habitat Directive](#). Under the Habitat Directive, protected areas must be shielded from nitrogen deposition as it disturbs the flora mix, giving nitrogen-loving plants like nettles a vegetative advantage over low-nitrogen plants. In 2015, Flanders established a provisional programmatic nitrogen management (PAS<sup>1</sup> in Dutch) system in place until a final PAS could be set up and rolled out after EU approval. Under the provisional PAS, high-nitrogen depositing farms must shut down by 2030, but new barns in the vicinity of a Natura 2000 area could still receive a permit if their calculated nitrogen deposition on the protected area would remain below 5 percent of the permitted nitrogen load for that particular area. Because five years after the provisional PAS was put in place, the Flemish government still has no final PAS proposal the NGOs decided to go to court against the provisional PAS with the argument that an additional five percent nitrogen deposition on areas that already suffer from nitrogen overload, violated the EU Habitat Directive. By granting the verdict, the RvVB created a precedent with potentially far reaching consequences as the Habitat Directive requirements not only affect agriculture, but all nitrogen emitting economic activities, like energy plants, construction and transportation.

Flemish Natura 2000 Areas Cover 12.3 Percent of Flanders<sup>2</sup>



Source: Flemish Agency for Nature and Forestry

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<sup>1</sup> <https://portaal.vlm.be/nl/SiteCollectionDocuments/PAS/VR%202014%202304%20DOC%200467-4TER%20S-IHD-besluiten%20-%20bijlage.pdf>

<sup>2</sup> <https://www.natura2000.vlaanderen.be/natura-2000-gebieden>

Because a similar Court verdict in The Netherlands<sup>3,4,5,6</sup> in May 2019 put some 18,000 pending permits in jeopardy, virtually threatening the halt of the whole Dutch economy, the Flemish government is on high alert to avoid a similar scenario. The Flemish Minister for Justice, Environment, Energy and Tourism, Zuhair Demir, believes that the Flemish government should be able to rapidly agree on a PAS that gains EU approval before major economic investment projects in Flanders get blocked by legal challenges. A major problem is because of its geographical situation, 55 percent of nitrogen deposits in Flanders are foreign, mainly from Germany, while a large percentage of Flemish nitrogen emissions are also deposited abroad<sup>7</sup>.

While work on the final PAS has been going on since 2016, Minister Demir hopes that a renewed sense of urgency will allow the Flemish Government and the Flemish Parliament to agree and vote on a proposal by summer 2021. Minister Demir will order an environmental assessment report for various scenarios and, at a later date, a socio-economic study with estimates of the costs and benefits of retained proposals, as well as an impact assessment. In the meantime, she has urged local authorities to act with utmost care when considering new permit requests in order to avoid a stream of legal challenges before the new PAS is in place. While protective measures must be taken for each Habitat area separately, it is generally accepted that technical measures like low-emission barns or air cleansing will not be enough. As agriculture, mostly from animal production, is the largest nitrogen emitter with almost 40 percent of emissions, after foreign emission imports at 45 percent, and especially emitting some 98 percent of ammonia (NH<sub>3</sub>) emissions, a potent greenhouse gas (GHG), NGOs and other groups claim that the Habitat Directive goals can only be met with a major reduction in animal production. Minister Demir is reportedly already suggesting that an animal farm buy-out program, like in The Netherlands, must be part of the PAS agreement. This is controversial with Flemish farmers' unions, especially as many Dutch farmers relocated across the Belgian border after Dutch PAS measures in 2019 prevented them from expanding their production at home.

## Conclusion

While the Flemish government and especially the Flemish Minister of Agriculture, Hilde Crevits, wants a new PAS that will spare animal production as much as possible, there's some consensus growing that especially ammonia production cannot be reduced sufficiently with technical innovations to meet the Habitat Directive's requirements for all protected areas by 2050. It is therefore likely that the final Flemish PAS program will include a remediation chapter for farmers to halt or reduce animal production in some geographical areas. However, it is premature to already speculate about the size of such a program and its impact of Flemish animal production.

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<sup>3</sup> [Dutch Government Announces Programs to Curb Nitrogen Emissions The Hague Netherlands 04-27-2020](#)

<sup>4</sup> [Advisory Council Critical of Government Approach to Reduce Nitrogen Emissions The Hague Netherlands 06-15-2020](#)

<sup>5</sup> [Dutch Ministry Abandons Controversial Feed Measure to Limit Nitrogen Emissions The Hague Netherlands 08-25-2020](#)

<sup>6</sup> [Dutch Parliament Approves Law to Reduce Nitrogen Emissions The Hague Netherlands 12-28-2020](#)

<sup>7</sup> <https://inbo-website-prd-532750756126.s3-eu-west-1.amazonaws.com/s3fs-public/bestanden/bijlagen/inbo.r.2015.6897993web1.pdf>

**Attachments:**

No Attachments.