

Notat til Husdyrreguleringsudvalget, 9. november 2010

## **Implementation of EU Directives with regard to livestock farming in the UK, the Netherlands and Germany – a summary of questionnaire responses**

*Helle Tegner Anker<sup>1</sup>*

This short comparative study has been carried out for the Danish Committee on Livestock Regulation. The ad-hoc Committee has been appointed by the Danish Minister for the Environment in accordance with the so-called Green Growth agreement. The summary is based on responses to the specific questions indicated below by the relevant ministries in the United Kingdom, the Netherlands and Germany as well as from one individual researcher in each country.<sup>2</sup>

### ***Overall summary:***

The questionnaire responses highlight certain similarities and differences among the countries in the implementation of the EU Directives with regard to environmental regulation of livestock farming. An overall conclusion is that the implementation in the UK, the Netherlands and Germany generally is more closely linked to the minimum requirements of the directives as opposed to a somewhat broader implementation in Denmark.

There are a few differences in the overall structure of livestock regulation in the UK as opposed to the Netherlands and Germany. The UK system operates with an environment permit (IPPC-permit) and a separate EIA procedure linked to a planning permission. In the Netherlands and Germany EIA is linked to the environmental (IPPC) permit.

In all three countries separate legislation implement the Habitats Directive – a habitat assessment may nevertheless be linked to the EIA procedure. Implementation of the Nitrates Directive is generally considered a separate matter and regulated by general rules. Compliance with the general nitrate requirements may to some extent be controlled or specified in individual permits, e.g. in Germany.

All three countries apply the IPPC-thresholds directly in their permit system. In the Netherlands lower permit thresholds apply as well – at least for the time being. In Germany a simplified permit (without public

---

<sup>1</sup> Professor of law, Faculty of Life Sciences, Copenhagen University, hta@life.ku.dk.

<sup>2</sup> Geoff Whittaker, Consultant & Adviser, Agricultural Law Association, England, Prof. Chris Backes, Maastricht University, The Netherlands and Herwig Unnerstall, Protestant Akademie Hofgeismar, Germany.

participation) applies to certain livestock projects below the IPPC-thresholds. Similarly, the mandatory Annex I thresholds of the EIA Directive are used in all three countries, with some more variation as to the use of thresholds for Annex II-projects. An interesting feature is that Germany in relation to Annex II-projects operates with general size thresholds as well as site-specific thresholds.

Spreading of manure is generally not subject to additional regulation as part of an IPPC-permit. However, certain control or information requirements to document e.g storage capacity, "safe" disposal or application in accordance with the general rules may be required. In Germany, the permit of any livestock installation irrespective of capacity includes a manure management concept (often so-called documentation of farmland – "Flächennachweis") in order to prove prospective conformity with the demands of the Fertilizer Ordinance by establishing a farm gate balance.<sup>3</sup>

Regarding habitat assessments the UK and the Netherlands apply a broad project concept, including manure spreading etc. It is, however, not quite clear to what extent the habitat assessment refers to or relies on the general regulation of manure spreading in accordance with the Nitrates Directive. Germany more clearly appears to exclude agricultural activities, e.g. manure spreading that complies with the provisions on good agricultural practices, from habitat assessment and permit requirements. However, such activities must comply with relevant requirements in a Natura 2000 management plan.

It appears that spreading of manure is primarily regulated through general rules in accordance with the Nitrates Directive. Such general rules may, however, be controlled or specified in an individual permit/EIA procedure as it is the case at least in Germany. Furthermore, manure spreading may in some instances be supplemented by specific provisions laid down in Natura 2000-management plans. Spreading of manure is in itself not subject to separate permit or assessment procedures and is apart from Germany not considered a core issue in individual permit or assessment procedures for livestock installations. In the UK the EIA procedure, however, includes assessment of manure spreading as part of an EIA for livestock projects. In relation to habitat assessments it appears that at least in Germany and possibly also in the Netherlands and the UK the assessment to some extent relies on the general and possibly more site-specific regulation of e.g. manure spreading.

---

<sup>3</sup> The "Fertilizer Ordinance" (Düngeverordnung) primarily implements the Nitrates Directive. It is mandatory in the entire territory and is applied in permit processes and operation of livestock farms irrespective of size.

## ***Summary regarding the specific questions***

### **1. IPPC Directive**

#### **a. What are the permit thresholds for poultry, production pigs and sows?**

**DK:** There are three different permits for livestock installations according to the Act on environmental permit for livestock installations - § 10 permit (simplified) for livestock installations from 15-75 “animal units” (one animal unit is equivalent to 100 kg N), § 11 permit for livestock installations of more than 75 “animal units”, and § 12 permit for livestock installations with more than 250 animal units (or 750 places for sows, 40.000 places for chickens/broilers, 40.000 places for hens, or 2.000 places for production pigs).

**UK/England:** Only the IPPC thresholds apply – 40.000 places for poultry, 2.000 places for production pigs (over 30 kg) and 750 places for sows (each threshold is treated independently). An environmental permit is the responsibility of the Environment Agency. If a planning permit is also required this will be issued before the environmental permit.

**NL:** The IPPC thresholds apply (IPPC-installations) together with a permit requirement for smaller installations (see below b)) according to the EMA-permit requirement (Environmental Management Act). NB: a new integral WABO-permit came into force 1 October, 2010 integrating building permit, EMA-permit, Nature Conservation permit etc. – it is, however, only a procedural change (one permit/one authority) coordinating all existing permit requirements.

**Germany:** The IPPC thresholds apply (§ 10 permit, with public participation), i.e. 40.000 places for hens, turkeys and fattening poultry (broilers, ducks etc.), 2.000 places for fattening pigs, 750 places for sows, 6.000 places for piglets together with a simplified permit (§ 19 permit, without public participation) for installations with 15.000-40.000 places for hens and fattening turkeys, 30.000-40.000 places for chicken laying hens and fattening poultry (broilers, ducks etc.), 1.500-2.000 places for fattening pigs, 560-750 places for sows, and 4.500-6.000 places for piglets.

**b. Are there permit requirements for other livestock farms than those listed in the IPPC Directive, e.g. cattle or pig/poultry production below the IPPC thresholds? If so – what are the permit thresholds?**

**DK:** Yes, see above (all types of livestock are subject to permit requirements if above the thresholds)

**UK/England:** No additional environmental permit requirements below the IPPC-thresholds

**NL:** Yes – pig and poultry installations with more than 25 poultry or 10 pigs/sows. However, “small agrarian” installations (below 50 “pigunits” – 1 pigunit may equal 1,5-2,3 sows and up to 144 hens) are subject to general rules only and do not need a permit. According to the Dutch Ministry the permit levels for pig and poultry installations will be raised to the IPPC-thresholds in the future and the permit requirement for installations below the IPPC-thresholds will be replaced by general regulations. Installations for cattle are subject to specific permit thresholds, e.g. more than 200 dairy cattle (young cows excluded), and 340 young dairy cows.

**Germany:** Yes, see above re. the simplified § 19-permit that does not include public participation but the same technical and environmental requirements as an IPPC-permit. This also applies to cattle installations, i.e. 600 or more places for cattle, 500 or more places for calves, and to fur animals (i.e. 750-1.000 places for fur animals, and § 10 permit for 1.000 or more places for fur animals). All smaller installations are subject to a permit requirement according to the “Federal Building Code” that also includes all requirements necessary to protect the environment (e.g. § 22 of the Federal Immission Control Act).

**c. Does a permit only regulate the physical installations on the farm or also the adjacent land use, e.g. spreading of manure, crop rotation, cultivation free areas etc.?**

**DK:** An environmental permit for livestock installations covers the adjacent land use and to some extent also contract-areas for spreading of manure.

**UK/England:** Information about associated land used for spreading of manure, growing crops, etc. should be included in an application. That associated land becomes part of the 'installation' for the purposes of the permit and may be made subject to conditions according to the facts of the case.

According to the Ministry permit conditions would not be included to control manure spreading or other activities on adjacent land. Similar rules apply in Wales, Scotland and Northern Ireland.

**NL:** Normally only the physical installation, but also land which immediately borders to the installation and is intensively used is regulated by the permit, e.g. for the run/moving of animals. Land which is cut off from the installation by a ditch or a road is not regulated by the permit. Spreading of manure is not regulated in a permit.

**Germany:** The applicant for a permit for any livestock installation has to ensure that prospective manure and nutrient management complies with the requirements of the Fertilizer Ordinance either by application on own farmland or of having established contracts with third parties. As part of the manure management concept (often so-called documentation of farmland – Flächennachweis) the amount of manure and nutrients produced, imported or exported has to be calculated and a sufficient storage capacity (minimum 6 months for liquid manure) has to be documented. In addition, the concept requires an explicit and complete identification of areas used for spreading of manure (inventory of farmland), including information on spatial position, type of land (arable land, grassland), soil type, nutrient supply and restrictions due to water protection zones or nature protection areas. The concept also includes information on the prospective crop rotation and the establishment of a farm gate balance.

## **2. EIA Directive**

### **a. What are the thresholds for mandatory EIA of poultry and pig installations (Annex I)?**

**DK:** EIA of livestock projects is since 1.1.2007 is integrated into the environmental permit procedure in the Act on environmental permit for livestock installations.

**UK/England:** EIA Directive Annex I-thresholds are used – i.e. poultry with more than a) 85.000 places for broilers, 60.000 places for hens, b) 3.000 places for production pigs (over 30 kg), or c) 900 places for sows.

**The Netherlands:** EIA Directive Annex I-thresholds are used, i.e. poultry with more than a) 85.000 places for chickens, 60.000 places for hens, b) 3.000 places for pigs, or c) 900 places for sows

**Germany:** EIA Directive Annex I-thresholds are used, i.e. 60.000 places for hens and turkeys, 85.000 places for chicken laying hens and fattening poultry (broilers, ducks etc.) , 3.000 places for pigs, 900 places for sows and 9.000 places for piglets.

### **b. Are there mandatory EIA requirements for other livestock installations? (e.g. cattle)**

**DK:** Yes – as integrated in the environmental permit procedure for e.g. cattle

**UK/England:** Annex II installations with a new floorspace exceeding 500 m<sup>2</sup> and projects in “sensitive areas” are subject to mandatory EIA

**NL:** No

**Germany:** No

### **c. Are there thresholds for Annex II livestock installations?**

**DK:** Livestock projects above 15 animal units (3 for fur farms) should be subject to an individual screening as part of the environmental permit system.

**UK/England:** Annex II installations with a new floorspace exceeding 500 m<sup>2</sup> and projects in “sensitive areas” are subject to mandatory EIA. All other Annex II projects shall be subject to individual screening according to the relevant Annex III criteria and the thresholds indicated. Government Guidance indicates non-binding thresholds (EIA is “..more likely to be required for...” installations with more than 750 sows, 2.000 fattening pigs, 60.000 broilers or 50.000 layers, turkeys or other poultry).

**NL:** Yes – poultry: 60.000 places for chickens or 45.000 places for hens, pigs: 2.200 places for pigs or 350 places for sows. Other livestock installations (e.g. cattle) are not subject to thresholds or individual screening. According to the Dutch Ministry the EIA requirement will be broadened to include other livestock categories as well.

**Germany:** Yes – the German legislation operates with general screening-thresholds (A) and site-specific screening thresholds (S), e.g. 40.000-60.000 places for hens and turkeys (A), 15.000-40.000 places for hens and turkeys (S), 40.000-85.000 places for young hens and fattening poultry (broilers, ducks etc.) (A), 30.000-40.000 places young hens and fattening poultry (broilers, ducks etc.) (S), 2.000-3.000 places for pigs (A), 1.500-2.000 places for pigs (S), 750-900 places for sows (A), 560-750 places for sows (S), 800 or more places for cattle (A), 600-800 places for cattle (S), 1000 or more places for calves (A), 500-1000 places for calves (S) 1.000 or more places for fur animals (A) and 750-1.000 places for fur animals (S). Other livestock installations than those listed with thresholds are not subject to an individual screening. The screening criteria are based on the relevant Annex III criteria.

### **d. In case of EIA for a livestock installation will a permit be combined with the IPPC-permit or will a separate (EIA) permit be issued?**

**DK:** EIA for livestock installations is integrated in the environmental permit system

**UK/England:** EIA (planning permission) and environmental permits are separate procedures (local planning authorities v Environment Agency) – however in practice there is considerable liaison. NB:

a planning permit is normally not required for agricultural land use or buildings (unless an EIA is required).

**NL:** An EIA is combined with the environmental permit (EMA-permit) and must be carried out before the permit can be issued. There is no “extra” EIA permit

**Germany:** EIA is a dependent part of the IPPC-permit procedure – there is no separate EIA permit.

**e. Does a screening or an EIA include an assessment of adjacent land use, e.g. spreading of manure and other cultivation practices?**

**DK:** Yes – as part of the environmental permit procedure

**UK/England:** Yes - the entire affected area would be identified and subject of the planning (EIA) application.

**NL:** Usually not. It only happens if a habitat assessment is required at the same time.

**Germany:** A screening and an EIA usually includes manure management and manure spreading to prove conformity with the demands of the Fertilizer Ordinance (see above).

**f. If so – does the following (EIA) permit regulate land use through conditions?**

**DK:** Yes

**UK/England:** Yes - the planning permission usually does include conditions which must be observed in connection with the development concerned. Similar rules apply in Wales, Scotland and Northern Ireland.



**NL:** No. Land use may be regulated through the Nature Conservation permit (in case of a habitat assessment). NB: WABO-permit as of 1 October 2010

**Germany:** The IPPC-permit usually includes provisions on the application of manure by conditions, referring e.g. to provide a minimum storage capacity of 6 months, to ensure application of manure according to good agricultural practices and the Fertilizer Ordinance on the land that has been documented in the application documents and to provide a manure-spreading certification.

### **g. Will shifting of manure spreading areas require an EIA screening as an amendment to an Annex I or II project or as a separate project?**

**DK:** Yes – changes should be notified to the authorities according to the Act on environmental permit for livestock installations. However, this does not apply to changes at existing farms that have not yet been subject to a permit according to the new Act.

**UK/England:** Changes may or may not require an amendment to the planning permission. Possibly a new EIA is needed if spreading in sensitive areas. Spreading of manure is not in itself listed as EIA development. Similar rules apply in Wales, Scotland and Northern Ireland.

**NL:** No

**Germany:** In principle changes in manure spreading may as a change in the waste management of an installation require a new EIA (and permit) if it is capable of having significant adverse effects.

## **3. Habitats Directive**

### **a. Does your member state consider an application to intensify livestock farms/build new installations a project subject to habitat impact assessment in accordance with article 6(3) of the Habitats Directive?**

**DK:** Yes

**UK/England:** Any plan or project likely to have a significant effect on an SAC must be submitted to Natural England for assessment. Similar rules apply in Wales, Scotland and Northern Ireland.

**NL:** Yes – more animals or new buildings/installations require an assessment if it may have a significant effect on a protected site. In practice deposition of Nitrogen compounds on protected areas are decisive. Any extra deposition may have a significant effect in areas where the deposition is already much too high if no measures are taken to compensate the increase.

**Germany:** Yes – new installations/projects may require an impact assessment. Activities that comply with the provisions on good agricultural practices do normally not require an assessment.

**b. Is livestock farming in any other way subject habitat assessment in accordance with article 6(3) of the Habitats Directive, e.g. as part of an EIA screening or process?**

**DK:** Habitat assessment is linked to relevant permit processes and may thus be combined with an EIA

**UK/England:** Where planning permission (EIA) is necessary the habitat assessment will in practice be carried out in tandem with the associated EIA.

**NL:** The habitat assessment will be integrated into the EIA process.

**Germany:** Habitat assessment will normally be performed in conjunction with a relevant permit (e.g. environmental permit and EIA). If no permit is required a notification scheme applies, cf. BNatSchG § 34 Abs. 6. The authority may impose restrictions or dismiss the project after notification. If it has not decided within a week after the notice the undertaker may proceed with his project.

**c. Do such assessments apply to both the physical installations and the land use, e.g. manure spreading?**

**DK:** Yes

**UK/England:** The assessment relates to all operations within the relevant plan or project. However, it appears that spreading of manure is generally assessed according to the general rules, e.g. the Nitrate Pollution Prevention (Wales) Regulations 2008 and the Water Environment (Diffuse Pollution) (Scotland) Regulations 2008 and not subject to further assessment.

**NL:** The assessment primarily focuses on the physical installations. Manure spreading is normally not a significant topic because manure spreading in protected areas is generally forbidden. In addition manure spreading is subject to general rules. Other aspects are assessed, e.g. dredging, mowing, change of use etc.

**Germany:** A habitat assessment will cover the physical installation, including the orderly waste management. If there are Natura 2000-sites among the areas listed in a manure management concept as areas for manure application, then the requirements of the management plans of each site have to be respected.

#### **d. Do the relevant authorities in your member state issue specific habitat permits or is the habitat permit included in other permits as the IPPC-permit or EIA-permit?**

**DK:** No specific habitat permit exists. Habitat assessment is linked to other permit requirements, e.g. environmental permit, or a specific notification scheme for projects not requiring a permit.

**UK/England:** Submission to (and prior consent from) Natural England in practice will be part of the process of obtaining planning permission or approval under the EIA Regulations. Habitat assessment is also linked to the permit procedures in Wales, Scotland and Northern Ireland.

**NL:** Yes – at the moment. However, from 1 October 2010 the WABO-permit (“omgevingsvergunning”) will integrate several permits.

**Germany:** Projects that do not otherwise need a permit are subject to notification requirements of BNatSchG § 34 Abs. 6. The authorities may impose restrictions or dismiss the project. If the authority does not reply within a week the undertaker may proceed with his project.

#### **4. Nitrates Directive**

##### **a. Is compliance with the requirements of the Nitrates Directive, e.g. maximum 170 kg N/ha controlled in the permit procedure for livestock farms?**

**DK:** Yes – the “harmony”-requirements are controlled in a permit procedure and a permit may restrict the max. kg N/ha requirement further depending upon the sensitivity of the areas.

**UK/England:** No - implementation of the Nitrates Directive is dealt with in separate regulations and is not part of the environmental permitting procedure or EIA regime applicable to livestock farms.

**NL:** No – there are separate rules transposing the Nitrates Directive through general legislation mainly in the Fertilizer Act. However, storage capacity is regulated in a general rule on the basis of the EMA. NB: NL legislation applies a concept of “animal-rights” – to keep animals you must document that you can get rid of the manure in an environmentally sound way.

**Germany:** It is regulated and controlled under the Fertilizer Ordinance, but proving compliance with the appropriate provisions is part of the permit procedure, e.g. by proving a storage capacity of 6 months or more and establishing a manure management concept taking the maximum threshold of the Nitrates Directive or other maximum levels established at national level into account.

##### **b. Are the requirements of the Nitrates Directive in any other way linked to permit or assessment procedures for livestock farms?**

**DK:** Generally not

**UK/England:** No – but the degree of application of nitrogen fertilisers to land in the context of the livestock unit as a whole will be taken into account in the assessments under the EIA Directive and the Habitats Directive.

NL: No

Germany: In order to avoid and to reduce nutrient losses livestock installations must comply i.a. with requirements according to the "Technical Instructions on Air Quality Control" (Technische Anleitung zur Reinhaltung der Luft - TA Luft) (No. 5.4.7.1 TA Luft).<sup>4</sup> There is supplementary legislation in place for the storing of (liquid) manure at the State ("Länder") level for all livestock installations aiming the protection of ground and surface water. Because of amendments to the German Constitution ("Grundgesetz") these state laws will soon be replaced by a federal law.

**c. Is it required to obtain a permit in order to spread manure from livestock farming in your member state e.g. on crops or is this activity in any other way subject to any kind of pre-approval?**

**DK:** No – but significant changes in spreading of manure in Natura 2000 areas are subject to a notification scheme according to the Nature Protection Act.

**UK/England:** No – not under the Nitrates Directive, but it could be part of another permit procedure.

**NL:** No – spreading of manure is regulated by general rules with the exception of spreading affecting habitat areas.

**Germany:** No – no permit procedure is necessary if manure spreading is in accordance with the provisions of the Fertilizer Ordinance or the specific management plans in Natura 2000-areas.

---

<sup>4</sup> This includes: 1) Feeding must be adapted to the nutritional requirements of the animals, 2) Installations for storing and transfilling of liquid manure must be constructed according to special provisions so that they are tight and water-impermeable, 3) Liquid manure storages must be covered, 4) The storage capacity for liquid manure to use as fertilizer for own purposes shall be dimensioned in a way that it is sufficient for at least 6 months, plus a supplement for generated precipitation water and cleaning water, 5) For liquid manure, which is passed on to third parties for further use, correct storage and application shall be secured by contract.