

# Netherlands

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BUREN

## OVERVIEW

### Regulation

#### 1 | What is the regulatory environment for meat and poultry?

The regulatory environment for all food processors in the Netherlands is primarily shaped by EU legislation on food hygiene and food safety (eg, the EU General Food Law Regulation), which has been implemented into Dutch law. The Animals Act sets the main framework on requirements relating to the food safety of meat and poultry, under which are regulations related to storage and transport.

The meat and poultry sector is regulated on behalf of the Ministry of Agriculture, Nature and Food Quality by the Netherlands Food and Consumer Product Safety Authority (NVWA). The NVWA supervises, among other things, animal and plant health, animal welfare, and the safety of food and consumer products.

#### 2 | What is the regulatory environment for all other human food?

As noted in question 1, the regulatory environment for all food processors in the Netherlands is primarily shaped by EU legislation on food hygiene and food safety, which has been implemented into Dutch law. Human food that does not concern animals or foodstuffs of animal origin is basically covered by the Commodities Act. As mentioned, the NVWA monitors the safety of food.

### Relevant organisations

#### 3 | What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

There are a variety of non-governmental organisations and other non-profit organisations that are active in the food and agribusiness sector in the Netherlands. Nearly every subsector within the industry has at least one organisation that aims to promote the interests of the subsector, and promote international trade and innovation. A selection of agricultural industry organisations are:

- the Dutch Federation of Agriculture and Horticulture is an entrepreneurial and employers' organisation representing and promoting around 50,000 agricultural businesses;
- the Netherlands Crop Farming Union, an industry organisation promoting crop farmers in the Netherlands;
- the Netherlands Poultry Farmers Union, an industry organisation promoting poultry farmers in the Netherlands;
- the Dutch National Federation of Food Industry represents and lobbies on behalf of 500 companies and 20 industry organisations in the food industry;
- Seed Valley – a regional organisation in the north west of The Netherlands with the aim of fostering collaboration between

companies and local governments active in the fields of plant breeding, seed technology and associated services; and

- Food Valley – a regional organisation aimed at boosting innovation performance by fostering collaboration between businesses, knowledge institutions and (local) government.

## LAND ACQUISITION AND USE

### Legislation

#### 4 | Identify and summarise the enacted legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

The Netherlands has over 2 million hectares of agricultural land, which means more than half of the overall surface of the Netherlands is used for agricultural purposes. The average price of a hectare of agricultural land was €59,900 in 2018. Prices vary greatly per region. Generally prices are highest in Flevoland and lowest in Friesland.

The land in The Netherlands is devised according to governmental spatial planning. Land-use plans are the most important tool in spatial planning. These plans set down where construction may take place, what may be built, the size of the structure and what it may be used for. The land that is designated for agricultural purposes may not be used for other purposes such as housing.

Basically, there are no restrictions with respect to the acquisition of agricultural land by a foreign party. Transfer of ownership is not specifically regulated under Dutch law. The general provisions on immovable property apply, which, in essence, means that the ownership of land is transferred through a notarial deed.

Most agricultural land usage rights in the Netherlands are acquired by a specific agricultural lease regulated in Book 7 of the Dutch Civil Code, and a distinction has to be made between establishing the lease and transferring the lease. Establishing the lease requires approval of the lease contract by the Agricultural Tenancies Authority. The lessee can transfer the lease to direct family members without the consent of the lessor upon application to the agricultural tenancies division of the district court.

An agricultural lease agreement must in principle be concluded for a definite period of time, being 12 years for farms and homesteads and six years for separate land or buildings. Lease agreements for longer terms are allowed but only if a clear termination date is included in the agreement.

It should also be noted that the lessor, who intends to offer agricultural land for sale, has an obligation to offer the land to the lessee first. Since the lessor must offer the value of the land under leased conditions (which depresses the market value of the land), land lease operations in the Netherlands are less attractive.

### Non-agricultural land rules

- 5 | Outline any rules related to use of farmland for non-agricultural uses.

As discussed above, designated agricultural land cannot be used for other purposes. An application for a change of purpose is rarely granted by the local government.

### Lending

- 6 | What special rules are important to agricultural lending in your jurisdiction?

No special regulations apply to agricultural lending.

### Publicly controlled property

- 7 | Describe any rules relating to public control of farm property in your jurisdiction. What enacted legislation governs them?

There is no specific regulation related to public control of farm property.

### Foreign ownership restrictions

- 8 | Are there any restrictions on foreign ownership of farm property in your jurisdiction? What enacted legislation governs them?

As mentioned above, there are no such restrictions.

## GOVERNMENT PROGRAMMES

### Support programmes

- 9 | Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

The EU's Common Agricultural Policy (CAP) programme, which primarily subsidises farmers through direct income support, is implemented in the Netherlands by the Netherlands Enterprise Agency, part of the Ministry of Economic Affairs and Climate Policy. In 2016, through the CAP, €736 million is available as direct income support (decreasing to €701 million in 2020). Additionally, a joint programme funded by CAP and the Dutch government allocates €176 million (2016) to rural development. The CAP makes another €150 million available for emergency relief for the agricultural sector as well as promoting market competitiveness.

In addition the Dutch government has included both the food and agribusiness sector as well as the horticulture and propagation material sector as one of its nine top economic sectors. Businesses in these sectors are eligible for government support to stimulate technological development by facilitating collaboration between the private sector, knowledge institutions and the government. The objective is, among other things, to improve the international competitiveness of the sectors.

A variety of financial and other incentives are available to agricultural companies established in the Netherlands, including the Research and Development (Promotion) Act (WBSO), innovation credits and the Dutch Good Growth Fund.

The WBSO (an R&D tax credit) aims to provide entrepreneurs with incentives that lower wage costs for R&D and other R&D costs and expenditures, such as prototypes or research equipment to invest in R&D. Innovation credits are available to support risky innovation projects that do not qualify for ordinary bank loans.

The Dutch Good Growth Fund provides financial support for investment, collaboration and exports to emerging markets by Dutch companies.

### Incentives for foreign investors

- 10 | Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

While there are no government programmes that provide assistance or government incentives for investment by foreign ownership in agribusiness, any business that is established in the Netherlands and fulfils the relevant criteria is eligible for benefits, subsidies and incentives available to other (Dutch) companies. Therefore foreign held Dutch agricultural companies are eligible for the same subsidies as domestically held companies.

## FOOD SAFETY, CERTIFICATION PROGRAMMES, ANIMAL SAFETY AND DISEASE

### Livestock legislation

- 11 | List the main applicable enacted legislation for primary processors of live animals.

Domestic legislation is included in the Animal Act 2011, the Decree on Trade in Living Animals and the Decree on Keepers of Animals, which regulate the health of food animals, transportation as well as disease outbreak and management. In addition, the NVWA has issued detailed rules concerning specific issues relating to animal welfare and transportation, including rules on housing and use of medicine.

The Netherlands has implemented Directive 94/65/EC of 14 December 1994, which lays down the requirements for the production and placing on the market of various types of meat in the decree relevant to meat, minced meat and meat products. This decree stipulates, among other things, that it is forbidden to prepare meat and meat products that do not comply with the criteria contained in it, what parts may not be used for human consumption and how meat must be categorised.

The NVWA is also tasked with enforcing these rules.

There is no distinction made between meat for domestic consumption and meat for export.

### Food safety regime

- 12 | Describe food safety regulations for meat and poultry products, and all other food products in your jurisdiction.

The food safety regime in the Netherlands is principally based on the European Union (EU) Regulation (EC) No. 178/2002 (General Food Law), which lays down general principles, requirements and procedures that underpin decision-making in matters of food and feed safety, covering all stages of food and feed production and distribution.

One of the basic principles of the General Food Law is the responsibility for food safety placed on the 'food and feed operators' (including agricultural companies), as they are in the best position in the production chain to ensure compliance with all relevant safety regulations.

In addition to the General Food Law, there is a large and diverse body of European legislation on various topics. Some legislation prescribes general rules for all products (horizontal legislation). The scope of other legislation is limited to specific products or product groups (vertical legislation).

Likewise, Dutch food safety laws are a tapestry of Acts of parliament, local regulations, ministerial orders, and regulations by semi-public trade organisations. The basis is the Commodities Act, which acts as a framework law, under which a variety of decrees and regulations have been issued that relate to the production and preparation of food, labelling, testing, hygiene, trading and selling to consumers. However, for

meat and poultry, the Animals Act sets the main framework on food safety requirements.

Compliance and enforcement of product quality or food safety regulations in all parts of the production chain including issuing a variety of permits, conducting inspections and investigations relating to food safety and animal welfare, is largely the responsibility of the NVWA.

### Safety enforcement

#### 13 | What enforcement can take place in relation to food safety? What penalties may apply?

The primary method of enforcement in food supply chain safety is through administrative procedures. Within the NVWA, the General Inspection Service is the enforcement agency with police-like investigative authority. A Regulatory Framework provides the underlying principles for the NVWA's enforcement authority.

Typically violations of food safety regulations are subject to administrative fines (under the Commodities Act: up to €820,000) and retractions of permits. However, certain more serious violations are also liable to criminal prosecution, which may result in criminal liability of both legal persons and natural persons, the latter including the possibility of arrest and jail.

### Product certification

#### 14 | Describe any certification programmes and regulations for genetically modified foods and organic foods.

Although not banned, commercial cultivation of genetically modified organism (GMO) crops does not take place in the Netherlands. The genetic modification of plants is generally supported by the Dutch government, as it enables more efficient creation of improved plant varieties. However, it is only permitted if careful scientific research shows that the possible risks to humans, animals, and the environment are negligible.

GMO legislation in the Netherlands is subject to the legal framework of the EU to ensure that the development of modern biotechnology, and more specifically of GMOs, takes place in safe conditions. On a national level, the Decree on Genetically Modified Organisms 2013 and the Regulation on Genetically Modified Organisms 2013 regulate the admission and use of GMOs. Admission of a GMO is subject to an environmental impact analysis and a permit is required. A permit is subject to conditions and may be revoked if these are not observed.

The Netherlands is party to the Cartagena Protocol on Biosafety, which includes international rules on the import and export of GMOs.

For organic products, Regulation (EC) 834/2007 provides the legislative framework on organic production and labelling of organic products. As of 1 January 2021, Regulation (EC) 2018/848 on organic production and labelling of organic products will replace Regulation (EC) 834/2007. For organic products from outside of the EU, a certificate of control is required that can be applied for electronically.

As for novel foods, since 1 January 2018, Regulation (EU) No. 2015/2283 replaces the Novel Foods Regulation (Regulation (EC) No. 258/97, and lays out detailed rules for the authorisation of novel foods, ingredients and processes. The new regime includes further clarification on the definition of novel foods, a centralised approval procedure at EU level through the European Food Safety Authority. On a domestic level, the Commodities Act Decree on Novel Foods and GMO applies.

### Food labelling requirements

#### 15 | What are the food labelling requirements, including the applicable enacted legislation, enforcement and penalties?

Food labelling requirements are laid down in the Commodities Act Decree on Information on Food Products, which implements Regulation (EU) No. 1169/2011 on the provision of food information to consumers. Mandatory information on a label must include the name of the food, a list of ingredients, quantity, allergens if so included in the product, best before date, special storage conditions and conditions for use, name and address of the food manufacturer and country of origin, and nutritional information. Such mandatory information must be presented in the Dutch language, with minimum letter size of 1.2 millimetres. Labelling information may not be misleading, including suggesting health claims.

The NVWA is tasked with enforcing labelling requirements. Failure to comply with applicable regulations may result in an order to take products out of circulation and fines.

### Food animal legislation

#### 16 | List the main applicable enacted legislation regarding health of food animals, including transportation and disease outbreak and management.

EU legislation applicable to the health of food animals, including transportation includes:

- Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine;
- Directive 91/68/EEC on animal health conditions governing intra-Community trade in ovine and caprine animals;
- Regulation (EC) No. 1/2005 on the protection of animals during transport and related operations; and
- Regulation (EC) No. 21/2004 establishing a system for the identification and registration of ovine and caprine animals.

Domestic legislation is included in the Animal Act 2011, the Decree on Trade in Living Animals and the Decree on Keepers of Animals, which regulate the health of food animals, transportation as well as disease outbreak and management. In addition, the NVWA has issued detailed rules concerning specific issues relating to animal welfare and transportation, including rules on housing and use of medicine.

The NVWA is also tasked with enforcing these rules.

### Animal movement restrictions

#### 17 | What are the restrictions on the movement of animals within your country?

Regulation (EC) No. 1/2005 provides rules on how transport is to be conducted and that a permit is required (except for transporters transporting animals within 65 kilometres). Different types of permits are required depending on whether transports (including the time spent on loading and unloading of animals) exceed eight hours.

### Slaughter legislation

#### 18 | Where would one find the regulations related to livestock slaughtering?

Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing prescribes the framework for the killing of animals bred or kept for the production of food. It also includes operational requirements and requirements for the construction, layout and equipment of slaughterhouses.

Domestic legislation on livestock slaughtering is included the Animal Act 2011 and several detailed regulations and guidelines, which stipulate how animals are to unloaded and offloaded, how they should be handled at the slaughterhouse, and how sedation and slaughtering is to take place.

The NVWA is in charge of enforcement of these rules.

### Pest control requirements

19 | Outline the regulatory regime for pesticides in your jurisdiction.

Only pesticides that have been approved by the Board for the Authorisation of Plant Protection Products and Biocides for the Netherlands market may be used. Regulation (EC) No. 1107/2009 concerning the placing of plant protection products on the market and the Crop Protection Products and Biocides Act provide for the legal framework for market approval of pesticides and crop protection products. The use of pesticides is only permitted if they do not cause harmful effects to humans, animals and the environment.

The Regulation (EU) No. 528/2012 concerning the making available on the market and use of biocidal products and its supporting legislation such as the Biocides Review Regulation (EU Regulation No. 1062/2014) prescribe that only biocides and biocidal products may be used that are allowed in the European market.

## BUSINESS ORGANISATION

### Typical organisation

20 | How are agricultural operations typically organised in your jurisdiction?

The private limited liability company (BV) is most commonly used as a business entity for farming. A BV has legal personality and it has an equity divided into shares. Shareholders or directors can be foreign residents. A BV is designed as a flexible instrument with very limited rules on capital protection. The flexibility is one of the reasons why a BV is very suitable type of entity for structuring joint ventures as well. The total incorporation procedure for a Dutch BV is straightforward and can normally be completed in a couple of days.

Although most farms are privately owned, the Dutch agricultural sector has a high percentage of cooperatives. In 2013, 68 per cent of Dutch agricultural products were sold through cooperatives. In the last few decades, there has been strong consolidation between cooperatives, leading to only a few or even just one cooperative per sector. Several agricultural cooperatives operate internationally or are multinational, and belong to the world's largest cooperatives.

A cooperative is a legal entity able to enter into agreements and own assets. Cooperatives have members rather than shareholders. The profits of the joint enterprise can be distributed to the members. The cooperative can be organised to limit or exclude the liability of the members for losses remaining after its dissolution.

Dutch cooperative law is flexible concerning internal governance and attracting equity from members or third parties. It has led to a large number of structures in the by-laws of cooperatives to suit their strategic needs. This often includes a legal separation between the cooperative association and the cooperative firm. As the cooperative does not have a capital divided into shares it cannot be acquired as such. However, its assets, and its individual member firms, are open to investment and can be acquired.

### Foreign ownership

21 | Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

There are no such restrictions.

## AGRICULTURAL WORKERS, IMMIGRATION, AND HEALTH AND SAFETY

### Worker rights

22 | Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

There are no specific rules or laws governing the rights of workers or employees for agricultural operations.

### Immigration regulation

23 | How is farmworker immigration regulated in your jurisdiction?

There are no specific regulations for immigration of farmworkers. Within the European Union there is a policy of freedom of movement for workers. Therefore, no immigration procedures apply to European workers.

### Work health and safety regulation

24 | Outline the health and safety regulations relating to farmworkers in your jurisdiction.

There are no specific regulations related to farmworkers. The primary responsibility for a health and safety policy within a company lies with the employer and the employees. Trade unions and branch organisations can also put forward adequate health and safety measures. Besides, the Dutch government is actively involved in the execution of health and safety policies. The Working Conditions Act provides a basis for a sound health and safety policy. It applies to all employers and employees in the Netherlands.

## INTERNATIONAL TRADE

### Import regulation

25 | Describe the regulatory environment for animal product imports.

Food that is intended for human consumption must meet the general food safety requirements of EU law. Under EC Regulation 178/2002, these requirements are that food must not be unsafe, injurious to health or unfit for human consumption. The import checks on live animals are further regulated by Directive 91/496 / EC and Regulation (EC) 282/2004, which lay down the principles governing the organisation of veterinary checks on animals entering the EU from third countries, as well as the document requirements in this regard. Similar regulations on the import checks and procedures on products of animal origin are laid down in Directive 97/78/EC, Regulation (EC) 136/2004 and Regulation (EC) 882/2004.

26 | Describe the regulatory environment for all other food imports.

Most food of non-animal nature is not subject to specific EU import conditions. However, certain food of non-animal origin may be subject to increased levels of official import controls in the light of potential risks. See Article 15, Paragraph 1 of Regulation (EC) No. 882/2004 and

the list of products included in Regulation (EU) 2019/1249 (amending Annex I to Regulation (EC) No. 669/2009). Apart from that, certification applies to the import of consignments of sprouts or seeds intended for the production of sprouts, excluding sprouts that have undergone a treatment that eliminates microbiological hazards in accordance with Regulation (EC) 211/2013.

### Tariffs and quotas

#### 27 | May tariffs, quotas or similar measures be put in place?

The EU is competent to negotiate or establish tariffs, quotas or similar measures that will then have direct effect in the Netherlands (and all other member states).

### Import and export treaties

#### 28 | What treaties apply to the import and export of agricultural products in your jurisdiction?

In addition to EU legislation, the Netherlands is bound to Free Trade Agreements that are agreed between the EU and several third countries, which may, for instance, reduce or slash tariffs on agricultural products will directly affect the import and export of agricultural products from and to the member states.

## INTELLECTUAL PROPERTY

### Plant breeder rights

#### 29 | How are plant breeders' property rights protected in your jurisdiction?

The Netherlands is a member of the International Union for the Protection of New Varieties of Plants Convention since 1968 and is party to the latest Act of 1991. The UPOV 1991 Act has been implemented in national law through the Seeds and Planting Materials Act 2005 and further implementing decrees.

Regulation (EC) No. 2100/94 on Community plant variety rights establishes a system of EU plant variety rights (PVR) for its member states. A clear distinction is made between granting a PVR, and the right to place propagation material on the market (trading).

The Community PVR system exists in parallel with national systems. If a national (Dutch) PVR is granted for a new variety, it is added to The Netherlands Register of Varieties. Once the national right has been obtained, the applicant can apply for a Community PVR with the Community Plant Variety Office in Angers, France. If a Community PVR is granted and registered in the EU Common Catalogue, the national PVR will become 'dormant' for the period the Community PVR is in force.

Trading of new plant varieties (agriculture crops, forestry, fruit and vegetables) may require prior admission to the National Plant Variety Register. Registration on this list may be subject to a Value for Culture and Use test. This test is required for most agriculture crops, but not for fruit and vegetables. Once a variety has been admitted to the National Plant Variety Register, the Dutch Plant Varieties Board will notify the EU and other member states and the propagation material can be freely traded in the EU. Horticulture plant varieties can be traded without registration in the National Plant Variety Register.

Granting of plant breeders' rights is dependent upon whether the variety complies with novel, distinct, uniform and stable (DUS) criteria and has a suitable name. Conformity with DUS criteria is verified by the Netherlands Inspection Service for Horticulture.

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## LEGAL | TAX | NOTARY

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### Access to plant varieties and technologies

#### 30 | How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

A farmer's privilege is the right of a grower to use harvested materials within the premises of their company for propagation purposes. This privilege only applies to crops in sectors in which the use of own seeds and seed materials is customary (for example, grain and potato crops). In this respect, the grower must:

- inform the PVR holder of the details of his company and the use of the seeds and seed materials; and
- pay a reasonable licence fee for the use of the harvested materials. In general, 60 per cent of the licence fee that is due in trade for use of that variety is considered reasonable.

A breeder's exemption allows a third party to use the protected variety to breed a new variety, without paying a royalty fee. This breeder's exemption is not an infringement of the rights of the PVR holder.

### Other intellectual property

#### 31 | What other intellectual property considerations apply to agribusiness in your jurisdiction?

The international licensing platform for vegetable plant breeding ILP Vegetable was set up in the Netherlands with the objective to guarantee worldwide access to patents that cover crucial vegetable plant traits currently covered by patent claims from ILP Vegetable member companies, which currently represent more than 50 per cent of the global seed market. Under the terms and conditions of this platform, the members of the ILP Vegetable will make all of their patents accessible to their fellow members, who can obtain a licence for breeding and commercialisation of new varieties. The licensee has to pay a royalty for the commercialisation of the new variety, if still covered by the patent, in countries where a patent right exists.



## ENVIRONMENTAL ISSUES

### Regulatory agencies

32 | Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The primary regulatory agency is the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and the Environment, which is charged with enforcing regulations relating to sustainability and safety, processing of (waste) materials and products, on the quality of the water and soil, and on spatial planning.

The NVWA is in charge of enforcement of animal manure legislation and carries out inspections on animal farms and manure transportation and processing companies.

### Water and air pollution regulation

33 | Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

The regulatory framework on water and air pollution stems from EU directives that are transposed into national law, including the Water Act. Based on this legislation, it is prohibited to dispose of waste, residues or other materials into the water system, unless a 'water permit' has been obtained authorising a specific disposal. A water permit can be obtained from the local council where the proposed activities are to take place.

The regulatory environment relating to air quality is designed to implement and meet the objectives primarily established through the EU regulatory framework. With regard to air quality, the Ministry of Infrastructure is taking measures against particulates pollution caused by livestock farming in the Netherlands.

### Waste regulation

34 | Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Under Chapter 10 of the Environmental Management Act, the general principle is established that all operators dealing with waste are obliged to take all precautionary measures reasonably possible to reduce to the extent possible negative impacts for the environment.

The Fertilizers Act provides the regulatory framework for all types of fertiliser (including vegetable and animal waste) and provides strict rules on the transport, use and trade of the fertiliser.

## UPDATE AND TRENDS

### Key developments of the past year

35 | What are the most noteworthy current trends or primary legal issues of concern in relation to agriculture and agribusiness in your jurisdiction? What future trends in relation to agriculture and agribusiness do you foresee in your jurisdiction?

The WTO and the EU are very influential with respect to policy and legislation for the highly internationally oriented Dutch agricultural sector. WTO agreements about further liberalisation of trade, including expansion of market access and reduction of export support, directly affect the agricultural policies and legislation in the Netherlands. In the coming years, it is expected that there will come an end to milk quotas, and conditions for farm supplements will change. In addition, the EU is becoming more and more influential in determining many of the production conditions of the agricultural sector relating to the environment,

energy, nature, animal welfare and health, food quality, etc. The Dutch policy is expected to be an elaboration of this EU policy.

Furthermore, on 19 November 2018, the Dutch Ministry of Agriculture, Nature, and Food Quality launched a new vision for the country's agriculture, which prioritises the protection of natural resources and the reduction of the sector's environmental impact. The new 2030 Plant Protection Vision is based on two principles: innovative plant breeding and precision or smart farming, which are both hot topics for the future of EU farming. Under the plan, plants will be better protected from pests and diseases, with a minimum use of pesticides. 'It aims to conserve nature and biodiversity, healthy species, and a clear economic perspective for farmers,' the Dutch ministry said in a statement. It is not yet clear how the vision will legally be implemented and to what regulatory changes this will lead.