

COMMISSION IMPLEMENTING DECISION

of 27 February 2014

on granting a derogation requested by Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

(notified under document C(2014) 1194)

(Only the English text is authentic)

(2014/112/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources⁽¹⁾ and, in particular, the third subparagraph of paragraph 2 of Annex III thereto,

Whereas:

(1) If the amount of manure that a Member State intends to apply per hectare each year is different from those specified in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in point (a) of that subparagraph, that amount is to be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and it has to be justified on the basis of objective criteria, such as long growing seasons and crops with high nitrogen uptake.

(2) On 22 October 2007, the Commission adopted Decision 2007/697/EC granting a derogation requested by Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources⁽²⁾, allowing the application of livestock manure up to a limit of 250 kg nitrogen per hectare per year, under certain conditions, on farms with at least 80 % grassland, in the context of the Irish action programme as implemented in the *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006* (Statutory Instrument No 378 of 2006), with expiration date on 17 July 2010.

(3) On 24 February 2011, the Commission adopted Decision 2011/127/EU⁽³⁾, amending Decision 2007/697/EC and extending the derogation through 31 December 2013, in the context of the Irish action programme as implemented in the *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010* (Statutory Instrument No 610 of 2010).

(4) The derogation granted by Decision 2007/697/EC as amended by Decision 2011/127/EU concerned 5 093 farms in 2012, corresponding to approximately 3,34 % of the total number of holdings with grazing animals, 11,44 % of the total number of livestock units and 5,19 % of the total net agricultural area.

(5) On 4 October 2013, Ireland submitted to the Commission a request for extension of the Derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC.

(6) Ireland, in conformity with paragraph 5 of Article 3 of Directive 91/676/EEC, applies an action programme throughout its whole territory.

(7) The 'Report from the Commission to the Council and the European Parliament 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 2008-2011' shows that in Ireland for ground-water, all monitoring stations have mean nitrate concentrations below 50 mg/l and 87 % of monitoring stations have mean nitrate concentrations below 25 mg/l. For surface water, all monitoring stations have mean nitrate concentrations below 50 mg/l and more than 99 % of monitoring stations have mean nitrate concentrations below 25 mg/l.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

⁽²⁾ OJ L 284, 30.10.2007, p. 27.

⁽³⁾ OJ L 51, 25.2.2011, p. 19.

- (8) The number of livestock and the utilisation of chemical fertilisers decreased over the last number of years. Cattle, pig and sheep numbers decreased respectively by 4 %, 11 % and 22 % from the period 2004-2007 to the period 2008-2011. Average nitrogen loading from livestock manure in the period 2008-2011 was 105 kg/ha, with a decline of 8 % compared to 2004-2007. Phosphorus average loading in the period 2008-2011 was 15 kg/ha, with a decline of 6 % compared to 2004-2007. Average chemical N fertiliser use decreased by 6 % in the period 2008-2011 compared to 2004-2007. Average chemical P fertiliser use decreased by 31 % in the period 2008-2011 compared to 2004-2007.
- (9) In Ireland, 93 % of agricultural land is devoted to grassland. Overall, in grassland farms, 47 % of the land area is farmed extensively and has therefore a relatively low stocking rate and low fertiliser inputs, 32 % is farmed under agro-environmental programmes and only 5,2 % is farmed intensively. 7 % is used for arable agriculture. The average chemical fertiliser use on grassland is 81 kg/ha nitrogen and 7 kg/ha phosphorus.
- (10) The Irish climate, characterised by an annual rainfall evenly distributed throughout the year and a relatively narrow annual temperature range promote a long grass-growing season ranging from 330 days per year in the south-west to around 250 days per year in the north-east.
- (11) The Commission, after examination of the request from Ireland, having considered the Irish action programme and in the light of the experience gained from the derogation provided for in Decision 2007/697/EC as amended by Decision 2011/127/EU considers that the amount of manure proposed by Ireland, corresponding to 250 kg nitrogen per hectare per year, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.
- (12) The supporting information presented by Ireland shows that the proposed amount of 250 kg nitrogen per hectare per year on farms with at least 80 % grassland is justified on the basis of objective criteria such as high net precipitation, long growing seasons and high yields of grass with high nitrogen uptake.
- (13) The Decision 2007/697/EC as amended by Decision 2011/127/EU has an expiration date of 31 December 2013. For the purpose of ensuring that the farmers concerned may continue to benefit from the derogation, it is appropriate to adopt this Decision.
- (14) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

Article 1

The derogation requested by Ireland in a letter of 4 October 2013, for the purpose of allowing a higher amount of livestock manure than that provided for in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in point (a) thereof, is granted, subject to the conditions laid down in this Decision.

Article 2

Definitions

For the purpose of this Decision, the following definitions shall apply:

- (a) 'grassland farms' means holdings where 80 % or more of the agricultural area available for manure application is grass;
- (b) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, deer, goats and horses;
- (c) 'grass' means permanent grassland or temporary grassland (temporary implying leys of less than four years);
- (d) 'parcel' means an individual field or a group of fields, homogeneous regarding cropping, soil type and fertilisation practices.

Article 3

Scope

This Decision applies on an individual basis to grassland farms and subject to the conditions prescribed in Articles 4, 5 and 6.

Article 4

Annual application and commitment

1. Farmers who want to benefit from a derogation under this Decision shall submit an application to the competent authority annually.
2. Together with the annual application referred to in paragraph 1, they shall undertake in writing to fulfil the conditions provided for in Articles 5 and 6.

Article 5

Application of manure and other fertilisers

1. The amount of livestock manure from grazing livestock applied to the land each year on grassland farms, including by the animals themselves, shall not exceed the amount of manure containing 250 kg nitrogen per hectare, subject to the conditions laid down in paragraphs 2 to 7.

2. The total nitrogen inputs shall not exceed the foreseeable nutrient demand of the considered crop, shall take into account the supply from the soil, and shall not exceed the maximum fertilisation rate applicable to the farm, established in the Nitrates Action Programme. Total nitrogen application shall be differentiated on the basis of stocking rate and grassland productivity.

3. A fertilisation plan shall be kept for each farm describing the crop rotation of the farmland and the planned application of manure and other fertilisers. It shall be available in the farm for each calendar year before 1 March. The fertilisation plan shall comprise at least the following:

- (a) the crop rotation plan, which must specify the acreage of parcels with grass and parcels with other crops, including a sketch map indicating the location of individual parcels;
- (b) the number of livestock, a description of the housing and storage system, including the volume of manure storage available;
- (c) a calculation of manure nitrogen and phosphorus produced in the farm;
- (d) the amount, type and characteristics of manure delivered outside the farm or to the farm;
- (e) the foreseeable nitrogen and phosphorus crop requirements for each parcel;
- (f) results of soil analysis related to nitrogen and phosphorus soil status if available;
- (g) the nature of the fertiliser to be used;
- (h) a calculation of nitrogen and phosphorus application from manure over each parcel;
- (i) a calculation of nitrogen and phosphorus application from chemical and other fertilisers over each parcel.

The fertilisation plan shall be revised no later than seven days following any change in agricultural practices to ensure consistency between this plan and actual agricultural practices.

4. Fertilisation accounts, including information related to management of nitrogen and phosphorus inputs and management of soiled water, shall be kept by each farmer.

They shall be submitted to the competent authority for each calendar year.

5. For each grassland farm benefiting from a derogation, the farmer shall accept that the application referred to in Article 4(1), the fertilisation plan and the fertilisation accounts can be subject to control.

6. Periodic nitrogen and phosphorus analysis in soil shall be done by each farmer who is granted a derogation for accurate fertilisation.

Sampling and analysis must be carried out at least once every four years for each homogeneous area of the farm, with regard to crop rotation and soil characteristics.

At least one analysis per five hectares of farmland shall be carried out.

The results of nitrogen and phosphorus analysis in soil shall be available at the farm benefiting from a derogation.

7. Livestock manure shall not be spread in the autumn before grass cultivation.

Article 6

Land management

1. Eighty per cent or more of the area available for manure application on farms shall be cultivated with grass.

2. Farmers benefiting from an individual derogation shall carry out the following measures:

- (a) temporary grassland shall be ploughed in spring;
- (b) ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand;
- (c) crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen.

3. Point (c) of paragraph 2 shall, however, not apply to clover in grassland with less than 50 % clover and to other leguminous plants that are undersown with grass.

Article 7

Monitoring

1. The competent authority shall ensure that maps showing the percentage of grassland farms, percentage of livestock and percentage of agricultural land covered by individual derogation in each county, as well as maps on local land use are drawn up and updated every year.

2. Monitoring shall be carried out on soil, surface water and groundwater in order to provide data on nitrogen and phosphorus concentrations in soil water, on mineral nitrogen in the soil profile and nitrate concentrations in groundwater and surface water, both under derogation and non-derogation conditions. Monitoring shall be carried out at farm field scale and in agricultural monitoring catchments. The monitoring sites shall include the main soil types, levels of intensity, fertilisation practices and crops.

3. A reinforced water monitoring shall be conducted in agricultural catchments located in proximity to most vulnerable water bodies.

4. Surveys on local land use, crop rotations and agricultural practices shall be carried out on farms benefiting from individual derogations. Collected information and data from nutrient analysis as referred to in Article 5(6) and monitoring as referred to in paragraph 2 of this Article shall be used for model-based calculations of the magnitude of nitrate and phosphorus losses from farms benefiting from a derogation.

Article 8

Controls

1. The competent authorities shall ensure that all the applications for a derogation are submitted to administrative control. Where the control demonstrates that the conditions provided for in Articles 5 and 6 are not fulfilled, the applicant shall be informed thereof. In this instance, the application shall be considered to be refused.

2. A programme of field inspections shall be established based on risk analysis, results of controls of the previous years and results of general random controls of application of legislation implementing Directive 91/676/EEC. The field inspections shall cover at least 5 % of the farms benefiting from an individual derogation in respect of the conditions set out in Articles 5 and 6 of this Decision. Where verification indicates non-compliance, the farmer shall be informed thereof. This information shall be considered in deciding on the request for derogation the next year.

3. The competent authorities shall be granted the necessary powers and means to verify compliance with a derogation granted under this Decision.

Article 9

Reporting

The competent authorities shall submit every year by June a report containing the following information:

- (a) maps showing the percentage of farms, percentage of livestock and percentage of agricultural land covered by individual derogation for each county, as well as maps on local land use, referred to in Article 7(1);
- (b) the results of ground and surface water monitoring, as regards nitrate concentrations, including information on

water quality trends, both under derogation and non-derogation conditions as well as the impact of derogation on water quality, as referred to in Article 7(2);

- (c) the results of soil monitoring as regards nitrogen and phosphorus concentrations in soil water and on mineral nitrogen in soil profile, both under derogation and non-derogation conditions, as referred to in Article 7(2);
- (d) a summary and evaluation of data obtained from the reinforced water monitoring referred to in Article 7(3);
- (e) the results of the surveys on local land use, crop rotations and agricultural practices, referred to in Article 7(4);
- (f) the results of model-based calculations of the magnitude of nitrate and phosphorus losses from farms benefiting from an individual derogation, referred to in Article 7(4);
- (g) an evaluation of the implementation of the derogation conditions, on the basis of controls at farm level and information on non-compliant farms, on the basis of the results of the administrative controls and field inspections, referred to in Article 8(1) and (2);
- (h) a comparative analysis of controls of derogation farms and non-derogation farms in Ireland. Information shall include data on annual inspections, administrative checks, agricultural inspections in the context of cross-compliance arrangements and statistics on breaches.

Article 10

Application

This Decision shall apply in the context of the Irish action programme as implemented in the *European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014 (Statutory Instrument No 31 of 2014)*.

This Decision shall expire on 31 December 2017.

Article 11

This Decision is addressed to Ireland.

Done at Brussels, 27 February 2014.

For the Commission

Janez POTOČNIK

Member of the Commission