

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2018/209

of 8 February 2018

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(2018) 624)

(Only the English text is authentic)

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) Directive 91/676/EEC lays down rules on the protection of waters against pollution caused by nitrates from agricultural sources. If the amount of manure that a Member State intends to allow per hectare each year is different from that specified in the first sentence of the second subparagraph of paragraph 2 of Annex III to that Directive, the amount of manure is to be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of Directive 91/676/EEC and 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 ⁽²⁾ granting a derogation requested by Ireland pursuant to Directive 91/676/EEC for the purpose of 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 Practices for Protection of waters*) Regulations 2006 (Statutory Instrument No 378 of 2006).
- (3) On 24 February 2011, the Commission adopted Decision 2011/127/EU ⁽³⁾, amending Decision 2007/697/EC and extending the derogation until 31 December 2013, in the context of the Irish Action Programme as implemented in the European Communities (*Good Agricultural Practices for Protection of waters*) Regulations 2010 (Statutory Instrument No 610 of 2010).
- (4) On 27 February 2014, the Commission adopted Decision 2014/112/EU ⁽⁴⁾, granting a derogation requested by Ireland pursuant to Directive 91/676/EEC for the purpose of 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 Practices for Protection of waters*) Regulations 2014 (Statutory Instrument No 31 of 2014). Decision 2014/112/EU expired on 31 December 2017.
- (5) The derogation granted by Decision 2014/112/EU concerned 6 802 farms in 2016, corresponding to approximately 5,4 % of the total number of holdings with grazing animals, 20,2 % of the total number of livestock units and 9,3 % of the total net agricultural area in Ireland.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1.

⁽²⁾ Commission Decision 2007/697/EC of 22 October 2007 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 (OJ L 284, 30.10.2007, p. 27).

⁽³⁾ Commission Decision 2011/127/EU of 24 February 2011 amending 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 (OJ L 51, 25.2.2011, p. 19).

⁽⁴⁾ Commission Implementing Decision 2014/112/EU 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 (OJ L 61, 1.3.2014, p. 7).

- (6) On 7 March 2017, Ireland submitted to the Commission a request for an extension of the derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC.
- (7) In conformity with Article 3(5) of Directive 91/676/EEC, Ireland applies an action programme throughout its whole territory.
- (8) The data provided by Ireland in the context of the reporting obligation required by Article 10 of Directive 91/676/EEC shows that, for the period 2012-2015, the waters are of generally good quality. All monitoring stations for groundwater in Ireland had mean nitrate concentrations below 50 mg/l and 87 % of those monitoring stations had mean nitrate concentrations below 25 mg/l. All monitoring stations for surface water in Ireland had mean nitrate concentrations below 40 mg/l and 99,5 % of those monitoring stations had mean nitrate concentrations below 25 mg/l.
- (9) The number of livestock in Ireland has increased over the last number of years. Cattle, pig and sheep numbers increased respectively by 3,8 %, 3,7 % and 5,1 % from the period 2008-2011 to the period 2012-2015, reversing the declines in the previous reporting period. Average nitrogen loading from livestock manure in the period 2012-2015 was 104 kg/ha, similar to the period 2008-2011. Average phosphorus loading in the period 2012-2015 was 15 kg/ha, also similar to the period 2008-2011. Average chemical N fertiliser use increased by 5 % in the period 2012-2015 compared to the period 2008-2011. Average chemical P fertiliser use increased by 32,7 % in the period 2012-2015 compared to the period 2008-2011. However, the average use of chemical P fertiliser in the period 2012-2015 was still 9,5 % lower compared to the average use of that fertiliser in the period 2004-2008 ⁽¹⁾.
- (10) In Ireland, 92 % of agricultural land is devoted to grassland. Overall, in grassland farms, 50 % of the land area is farmed extensively and has therefore a relatively low stocking rate and low fertiliser inputs, 21 % is farmed under agro-environmental programmes and only 9,3 % is farmed intensively. 8 % is used for arable agriculture. The average chemical fertiliser use on grassland is 80 kg/ha nitrogen and 8 kg/ha phosphorus ⁽¹⁾.
- (11) The Irish climate, characterised by an annual rainfall evenly distributed throughout the year and a relatively narrow annual temperature range, promotes 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 ⁽²⁾.
- (12) After examination of the request from Ireland in accordance with the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in the light of the Irish Action Programme and the experience gained from the derogation provided for in Decisions 2007/697/EC and 2014/112/EU, the Commission 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 individual conditions that should apply to farmers covered by the authorisation.
- (13) 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 long growing seasons and high yields of grass with high nitrogen uptake.
- (14) Decision 2014/112/EU will expire on 31 December 2017. For the purpose of ensuring that the farmers concerned continue to benefit from the derogation, it is appropriate to adopt this Decision.
- (15) 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

Derogation

The derogation requested by Ireland by letter of 7 March 2017, for the purpose of allowing application to the land of 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, is granted, subject to the conditions laid down in this Decision.

⁽¹⁾ Department of Agriculture, Food and the Marine, Ireland.

⁽²⁾ Teagasc — the Agriculture and Food Development Authority, Ireland.

*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 4 years);
- (d) 'parcel' means an individual field or a group of fields, homogeneous regarding cropping, soil type and fertilisation practices;
- (e) 'fertilisation plan' means an advance calculation about the planned use and availability of nutrients;
- (f) 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients.

*Article 3***Scope**

This derogation applies to grassland farms for which an authorisation has been granted in accordance with Article 4.

*Article 4***Annual application and commitment**

1. Grassland farmers may submit an application for an annual authorisation to apply livestock manure containing up to 250 kg nitrogen per hectare per year to the competent authorities. The application shall contain a declaration stating that the grassland farmer submits to all the controls provided for in Article 9.
2. In the annual application referred to in paragraph 1, the applicant shall undertake in writing to fulfil the conditions laid down in Articles 6 and 7.

*Article 5***The granting of authorisations**

Authorisations to apply an amount of livestock manure containing up to 250 kg nitrogen per hectare per year shall be granted subject to the conditions laid down in Articles 6 to 7.

*Article 6***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 8.
2. The total nitrogen inputs shall neither exceed the foreseeable nutrient demand of the considered crop nor the maximum fertilisation rate applicable to the grassland farm, established in the Nitrates Action Programme and shall take into account the supply from the soil. Total nitrogen application shall be differentiated on the basis of stocking rate and grassland productivity.

3. A fertilisation plan shall be prepared and kept for each grassland farm describing the crop rotation of the farmland and the planned application of manure and other fertilisers. It shall be available at the grassland farm for each calendar year before 1 March of that year. 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 on the grassland farm, a description of the housing and manure storage system, including the volume of manure storage available;
- (c) a calculation of the manure nitrogen and phosphorus produced on the grassland farm;
- (d) the amount, type and characteristics of manure delivered outside the grassland farm or to the grassland 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 for each parcel;
- (i) a calculation of nitrogen and phosphorus application from chemical and other fertilisers for each parcel.

The fertilisation plan shall be revised no later than 7 days following any change in agricultural practices at the grassland farm.

4. Fertilisation accounts, including information related to the management of nitrogen and phosphorus inputs and the management of soiled water, shall be prepared and kept for each grassland farm. They shall be submitted to the competent authority for each calendar year by 31 March of the following calendar year.

5. Periodic nitrogen and phosphorus analysis in soil shall be done for each grassland farm.

Sampling and analysis shall be carried out at least once every 4 years for each homogeneous area of the grassland farm, with regard to crop rotation and soil characteristics.

At least one analysis per 5 hectares of farmland shall be carried out.

The results of the nitrogen and phosphorus analysis in soil shall be available at the grassland farm.

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

7. At least 50 % of slurry produced on the holding shall be applied by 15 June. Low-emission slurry spreading equipment shall be used for any slurry applications after 15 June.

Article 7

Land management

1. Temporary grassland shall be ploughed in spring.

2. Ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand.

3. Crop rotation shall not include leguminous or other plants fixing atmospheric nitrogen. This shall, however, not apply to clover in grassland with less than 50 % clover and to other leguminous plants that are undersown with grass.

*Article 8***Monitoring**

1. The competent authorities shall ensure that maps showing the percentage of grassland farms, the percentage of livestock and the percentage of agricultural land covered by authorisations in each County, as well as maps on local land use, are drawn up and that they are updated every year.
2. The competent authorities shall monitor soil, surface water and groundwater and shall provide the Commission with data on nitrogen and phosphorus concentrations in soil water, on mineral nitrogen in the soil profile and on nitrate concentrations in groundwater and surface water, both under derogation and non-derogation conditions. The monitoring shall be carried out at farm field scale and in agricultural monitoring catchments. The monitoring sites shall be representative of the main soil types and levels of intensity, the prevalent fertilisation practices and the main crops.
3. The competent authorities shall conduct reinforced water monitoring in agricultural catchments located in proximity to the most vulnerable water bodies.
4. The competent authorities shall carry out surveys on local land use, crop rotations and agricultural practices for grassland farms covered by authorisations.
5. Information and data collected from nutrient analysis as referred to in Article 6(5) and from 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 grassland farms covered by authorisations.

*Article 9***Controls**

1. The competent authorities shall ensure that all the applications for authorisations are submitted to administrative control. Where this control demonstrates that the conditions provided for in Articles 6 and 7 will not be fulfilled, the applications shall be refused and the applicant shall be informed of the reasons thereof.
2. The competent authorities shall establish a programme of field inspections of the grassland farms based on a risk analysis, the results of controls of the previous years and results of general random controls of application of the Irish legislation implementing Directive 91/676/EEC. The field inspections shall verify compliance with the conditions set out in Articles 6 and 7 of this Decision and shall cover at least 5 % of the farms benefiting of authorisations.
3. Where verification indicates non-compliance with this Decision, the competent authorities shall take the necessary action for redress. Farmers which do not comply with Articles 6 and 7 shall be fined in accordance with national rules and may be excluded from an authorisation the following year.
4. The competent authorities shall be granted the necessary powers and means to verify compliance with the conditions for an authorisation granted under this Decision.

*Article 10***Reporting**

The competent authorities shall, every year by 30 June at the latest, submit a report to the Commission containing the following information:

- (a) maps showing the percentage of grassland farms, the percentage of livestock and the percentage of agricultural land covered by authorisations for each County, as well as maps on local land use, as referred to in Article 8(1);
- (b) the results of ground and surface water monitoring as regards nitrate concentrations, including information on water trends, both under derogation and non-derogation conditions as well as the impact of the derogation granted in this Decision on water quality, as referred to in Article 8(2);
- (c) the results of soil monitoring as regards nitrogen and phosphorus concentrations in soil water and as regards mineral nitrogen in soil profile, both under derogation and non-derogation conditions, as referred to in Article 8(2);
- (d) a summary and an evaluation of data obtained from the reinforced water monitoring referred to in Article 8(3);

- (e) the results of the surveys on local land use, crop rotations and agricultural practices referred to in Article 8(4);
- (f) the results of the model-based calculations of the magnitude of nitrate and phosphorus losses referred to in Article 8(5);
- (g) an evaluation of the implementation of the conditions for the authorisations on the basis of the results of the administrative controls and field inspections referred to in Article 9(1) and (2);
- (h) a comparative analysis of controls of grassland farms in Ireland covered by authorisations and grassland farms in Ireland not covered by authorisations. The analysis shall include data on annual inspections, administrative checks, agricultural inspections in the context of cross-compliance arrangements and statistics on non-compliance.

Article 11

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 2017 (Statutory Instrument No 605 of 2017)*.

This Decision shall apply until 31 December 2021.

Article 12

Addressee

This Decision is addressed to Ireland.

Done at Brussels, 8 February 2018.

For the Commission

Karmenu VELLA

Member of the Commission
